No. 702

SUPREME COURT, U.S.
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JOHN T. FEY, Clerk

In the Superior Court of Pennsylvania

Philadelphia District

Nos. 71, 72 and 73 October Term, 1957

COMMONWEALTH OF PENNSYLVANIA

vs.

ROBERT RANDALL,
SOPHIE WOFSY,
Appellants

RECORD

Appeal from the Judgment and Sentence of the Court of Quarter Sessions of Northampton County in Commonwealth v. Robert Charles Randall, No. 17 *October Sessions* 1955.

Appeal from the Judgment and Sentence of the Court of Quarter Sessions of Northampton County in Commonwealth v. Sophie Wofsy, No. 17-*B October Sessions* 1955.

Appeal from the Judgment and Sentence of the Court of Quarter Sessions of Northampton County in Commonwealth v. Robert Randall, No. 44 *October Sessions* 1955.

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RECORD

IN THE COURT OF QUARTER SESSIONS
OF NORTHAMPTON COUNTY

Nos. 17, 17B and 44 November Term, 1955

No. 17 November Term, 1955

Commonwealth of Pennsylvania

vs.

Robert Charles Randall

No. 17B November Term, 1955

Commonwealth of Pennsylvania

vs.

Sophie Wofsy

No. 44 November Term, 1955

Commonwealth of Pennsylvania

vs.

Robert Randall

I.

RELEVANT DOCKET ENTRIES

(1) DOCKET ENTRIES—NO. 17 NOVEMBER TERM, 1955

Commonwealth of Pennsylvania

vs.

Robert Charles Randall

February 13, 1956, The Grand Jury returns a True Bill.

February 15, 1956, The defendant Robert C. Randall being arraigned pleads "Not Guilty", whereupon a jury of twelve good lawful men and women, being duly sworn according to law, do say that they find the defendant guilty on all indictments. Defendant released on $3,000.00 bail pending filing of motion for new trial.

February 20, 1956, Motion for new trial filed for defendant.

June 4, 1956, Petition for allowance to file Motion in Arrest of Judgment nunc pro tunc, filed.

October 8, 1956, Defendant's motions in arrest of judgment and for a new trial are severally overruled and the District Attorney is directed to notify the defendant to appear in court on

Docket Entries—No. 17 Nov. T., 1955

October 22, 1956 at 1:30 p.m. for sentence. William G. Barthold, P.J.

October 22, 1956, The defendant appeared before the court. Same day the sentence of the court is that the defendant pay a fine of $300.00 to the Commonwealth of Pennsylvania for the use of the county of Northampton, pay costs of Prosecution, and in default thereof to undergo imprisonment in the Northampton County Prison for a period of 3 months. Defendant released on Bail pending appeal to the Superior Court.

October 22, 1956, Exceptions to Opinion and Order of the Court, filed.

November 5, 1956, The foregoing exceptions overruled and Bill sealed. By the Court: William G. Barthold, P.J.

Eo die, Certiorari from Superior Court filed to No. 71 October Term, 1957.

(2) DOCKET ENTRIES—NO. 17-B NOVEMBER TERM, 1955

Commonwealth of Pennsylvania

vs.

Sophie Wofsy

February 13, 1956, the Grand Jury returns a True Bill.

February 15, 1956, The defendant Sophie Wofsy being arraigned pleads "Not Guilty", whereupon a jury of twelve good lawful men and women, being duly sworn according to law, do say that they find the defendant guilty on the indictment. Defendant released on $1000.00 bail pending filing of motion for new trial.

February 20, 1956, Motions for a new trial and in arrest of judgment filed for defendant Sophie Wofsy.

April 30, 1956, Additional reasons in support of motion in arrest of judgment filed.

October 8, 1956, Defendant's motions in arrest of judgment and for a new trial are severally overruled and the District Attorney is directed to notify the defendant to appear in court on October 22, 1956 at 1:30 p.m. for sentence. William G. Barthold, P.J.

October 22, 1956, The defendant Sophie Wofsy appeared before the Court. Same day sentence

of the court is that the defendant pay a fine of $300.00 to the Commonwealth of Pennsylvania for the use of the County of Northampton, pay costs of prosecution, and in default thereof to undergo imprisonment in the Northampton County prison for a period of 3 months. Defendant released on bail in the sum of $500.00 pending appeal to the Superior Court.

Eo die, Exceptions to opinion and order of the court filed.

November 5, 1956, The foregoing exceptions overruled and bill sealed. By the Court: William G. Barthold, P.J.

Eo die, Certiorari from Superior Court filed to No. 72 October Term, 1957.

(3) DOCKET ENTRIES—NO. 44 NOVEMBER TERM, 1955

Commonwealth of Pennsylvania

vs.

Robert Randall

February 13, 1956, The Grand Jury returns a True Bill.

February 15, 1956, The defendant being arraigned pleads "not guilty", whereupon a jury being called, who being duly sworn do say that they find defendant guilty on all indictments. Defendant released on $3000.00 bail pending filing of motion for a new trial.

February 20, 1956, Motion for new trial and motion in arrest of judgment filed for defendant.

October 8, 1956, Defendant's motions in arrest of judgment and for a new trial overruled and District Attorney directed to notify the defendant to appear in Court on October 22, 1956 at 1:30 p.m. for sentence.

October 22, 1956, The defendant Robert Randall appeared before the Court. Same day the sentence of the court is that the defendant undergo imprisonment in the Northampton County Prison for a period of 1 to 3 years computed from date of commitment, pay a fine of $100.00,

pay costs of prosecution and stand committed until this sentence is complied with. Defendant released on bail in the sum of $5000.00 pending appeal to the Superior Court.

Eo die, Exceptions to opinion and order of the Court filed.

November 5, 1956, The foregoing exception overruled and bill sealed. By the Court, William G. Barthold. P.J.

November 5, 1956, Certiorari from Superior Court to No. 73 October Term, 1957 filed.

II.

INDICTMENTS

(1) INDICTMENT—NO. 17 NOVEMBER TERM, 1955

Commonwealth v. Robert Charles Randall
Vio. Pa. Liquor Code

Northampton County, ss.

1. The GRAND INQUEST of the Commonwealth of Pennsylvania, inquiring upon their respective oaths and affirmations for the County of Northampton, present, that Robert Charles Randall late of said County, yeoman, on the 24th day of September in the year of our Lord, one thousand nine hundred and fifty-five, and at divers times within the two years last past, at the County aforesaid and within the Jurisdiction of the above Court, did unlawfully sell, furnish or give liquor and/or malt or brewed beverages to minors, namely Emma Wentzell, Geraldine Mary Tomsic and others, contrary to the form of the Act of the General Assembly in such cases made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania;

2. And the GRAND INQUEST, aforesaid, upon their respective oaths and affirmations aforesaid, further present that the said Robert Charles

Randall on the day and year aforesaid, at the county aforesaid and within the Jurisdiction of the above Court, did unlawfully permit liquor and/or malt or brewed beverages to be sold, furnished and given to minors, namely Emma Wentzel, Geraldine Mary Tomsic and others, contrary to the form of the Act of the General Assembly in such cases made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

CLINTON BUDD PALMER
District Attorney

Witnesses:

A. S. Onuschak
Cpl. Thomas Cavanaugh
Donald R. Rohn
W. L. Templeton
Geraldine Tomsic
Charles Tomsic
Emma Wentzell
Esther Frable
Hermina Heatter
Jack Marsh
Arthur Haring

(Endorsed)
No. 17 November Sessions, 1955
Quarter Sessions
Northampton County

Commonwealth of Pennsylvania
vs.
Robert Charles Randall

Indictment—No. 17 Nov. T., 1955
Plea

Vio. Pa. Liquor Code

Misdemeanor

A TRUE BILL

James E. Wesley, Foreman 2/13/56

And now, February 14, 1956 the Defendant being arraigned pleads Not Guilty.

ROBERT RANDALL

Eo die District Attorney similiter et issue.

C. B. PALMER,
District Attorney

Prosecutor: William J. Hontz.

(2) INDICTMENT—NO. 17-B NOVEMBER TERM, 1955

Commonwealth v. Sofie Wofsy

Vio. Pa. Liquor Code

Northampton County, ss:

1. The GRAND INQUEST of the Commonwealth of Pennsylvania, inquiring upon their respective oaths and affirmations for the County of Northampton, present, that Sophie Wofsy late of said County, yeoman, on the 23rd day of September in the year of our Lord, one thousand nine hundred and fifty-five, at the County aforesaid and within the jurisdiction of the above Court, did unlawfully sell, furnish or give liquor and/or malt or brewed beverages to a minor, namely: Geraldine Mary Tomsic, contrary to the form of the Act of the General Assembly in such cases made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania;

2. And the GRAND INQUEST, aforesaid, upon their respective oaths and affirmations aforesaid further present that the said Sophie Wofsy on the day and year aforesaid, at the County aforesaid and within the Jurisdiction of the above Court, did unlawfully permit liquor and/or malt or brewed beverages to be sold, furnished and given to a minor,

namely: Geraldine Mary Tomsic, contrary to the form of the Act of the General Assembly in such cases made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

CLINTON BUDD PALMER
District Attorney

Witnesses

A. S. Onuschak
Cpl. Thomas Cavanaugh
Donald R. Rohn
W. L. Templeton
Geraldine Tomsic
Charles Tomsic
Emma Wentzell
Estl er Frable
Hermina Heatter
Jack Marsh
Arthur Haring

(Endorsed)

No. 17-B November Sessions, 1955
Quarter Sessions
Northampton County

Commonwealth of Pennsylvania

vs.

Sophie Wofsy

Vio. Pa. Liquor Code

Indictment—No. 17-B Nov. T., 1955
Plea

Misdemeanor

A TRUE BILL

James E. Wesley Foreman 2/13/56

And now Feb. 14th, 1956, the Defendant being arraigned plead Not Guilty.

SOPHIA WOFSY

Eo die District Attorney similiter et issue.

C. B. PALMER
District Attorney

Prosecutor: A. S. Onuschak.

(3) INDICTMENT—NO. 44 NOVEMBER TERM, 1955

Commonwealth vs. Robert Randall
Corrupting the Morals of Minor Children

Northampton County, ss:

The GRAND INQUEST of the Commonwealth of Pennsylvania, inquiring upon their respective oaths and affirmations for the County of Northampton, present, that Robert Randall, late of th said county, on or about the 19th day of August in the year of our Lord, one thousand nine hundred and fifty-five, and at divers times within the two years last past, at the County aforesaid and within the jurisdiction of the Court, being of the age of twenty-one years and upwards, did acts corrupting or tending to corrupt the morals of minor children, to-wit: Emma Wentzell, Esther Frable, Jack Marsh, Geraldine Tomsic and Charles Tomsic, all of said children being then and there under the age of eighteen years, contrary to the form of the Act of the General Assembly in such cases made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

CLINTON BUDD PALMER
District Attorney

Witnesses:

Donald R. Rohn
A. S. Onuschak
Cpl. Thomas Cavanaugh
W. L. Templeton

Indictment—No. 44 Nov. T., 1955
Plea

Geraldine Tomsic
Charles Tomsic
Emma Wentzell
Esther Frable
Hermine Heatter
Jack Marsh
Arthur Haring

(Endorsed)

No. 44 November Sessions, 1955
Quarter Sessions
Northampton County

Commonwealth of Pennsylvania
vs.
Robert Randall

Corrupting the Morals of Minor Children

Misdemeanor
A TRUE BILL
James E. Wesley Foreman 2/13/56

And now February 14, 1956, the Defendant being arraigned pleads Not Guilty.

ROBERT RANDALL

Eo die District Attorney similiter et issue.

C. B. PALMER
District Attorney

Prosecutor Donald R. Rohn.

III.

THE EVIDENCE, CHARGE OF THE COURT AND POINTS

(Nos. 17, 17-B and 44 November Term, 1955)

These cases came on to be heard before the Honorable William G. Barthold, President Judge, Northampton County, Third Judicial District, Pennsylvania, and a Jury, Tuesday morning, February 14, 1956.

Appearances:

Clinton Budd Palmer, Esq., District Attorney of Northampton County, for the Commonwealth.

David H. Miller, Esq., and Herbert Fishbone, Esq., for Defendant Robert C. Randall.

Justin D. Jirolanio, Esq., for Defendant Sofie Wofsie.

Jury selected and sworn.

MR. FISHBONE: (At side bar): We understand, your Honor, that the testimony in this case will involve the separate testimony of about three or four minor children, under the age of 18 years, and we have reason to believe that their stories are not essentially the same, and we would like to ask that they be excluded from the courtroom, so that they can be called

to testify individually and none of them hear the testimony of the others.

MR. PALMER: It's within the sound discretion of the Court.

THE COURT: It is all right with me. I have no objection to it.

MR. PALMER: May they stay in after they testify?

MR. FISHBONE: Oh, I think so. I don't see any objection to that.

MR. PALMER: It's all right with me. The first witness that I will call will be one of them, and that is Charles Tomsic, so he might as well stay in, and we will exclude the others.

MR. FISHBONE: All right.

(Witnesses leave the courtroom.)

Mr. Palmer opens to Jury.

Recess

CHARLES TOMSIC, called as a witness on behalf of the Commonwealth and sworn.

Direct Examination

BY MR. PALMER:

Q. Your name, sir?

A. Charles Tomsic.

Q. Where do you live, Charles?

A. Wind Gap, R. D. 1.

Q. How old are you?

A. 18.

Q. And when were you 18?

A. November the 11th.

Q. 1955?

A. Yes, sir.

Q. So that in July, August, September of 1955 you were 17 years of age: Is that correct?

A. Yes, sir.

Q. Do you go to school?

A. No, sir.

Q. Do you work?

A. Yes, sir.

Q. Where do you work?

A. Parsons Slate Quarry.

Q. Do you live with your family?

A. Yes, sir.

Q. You are not married, are you?

A. No, sir.

Q. And who in your family do you live with?

A. My brother.

Q. And how about your sister. Do you live with your sister?

A. She's married.

Q. When did she get married?

A. About two months ago.

Q. And what's her name?

A. Geraldine Tomsic.

Q. How old is she: Do you know?

A. 17.

Q. Now, Charles, do you know Robert Randall?

A. Yes, sir.

Q. Is he in the courtroom today?

A. Yes, sir.

Q. Will you point to him for us?

A. Right there (indicating).

Q. When did you first meet Robert Randall?

A. I knew him almost ever since he moved out there, but—

Q. How long ago was that?

A. Oh, about five years.

Q. Have you ever seen Sofie Wofsie?

A. I seen her once out there at that party.

Q. There at that party, and by "There" where do you mean?

A. Out by Randall's house.

Q. Out at Randall's house?

A. Yes, sir.

Q. And is she in the courtroom?

A. Yes, sir.

Q. Will you point to her?

A. Over there (indicating).

Q. Now you say you were at a party at Randall's house: Is that right?

A. Yes, sir.

Q. When was that party, if you remember?

A. I don't remember.

Q. Well, was it within the last year?

A. Yes, sir. It was this past summer.

Q. This last summer: Is that correct?

A. Yes.

Q. That is the summer of 1955?

A. Yes, sir.

Q. How many times were you at Randall's house during the summer of 1955?

A. Just this, two times.

Q. Two times?

A. Yes, sir.

Q. And the first time was during the summer of 1955?

A. Yes, sir.

Q. And how about the second time?

A. The next day.

Q. The next day. So that also was in the summer of 1955?

A. Yes, sir.

Q. Now, about what time did you get to Randall's house the first time?

A. Oh, I'd say about one o'clock.

Q. In the afternoon?

A. Yes, sir.

Q. And were you alone when you went there?

A. Yes, sir.

Q. And when you went in, who, if anybody, was there?

A. Well, there was Randall and Homer Smickley and all these here girls, Emma—

Q. Who were the girls?

A. Emma Wentzel, Geraldine Tomsic, and Esther Frable, and that Hermina Heatter.

Q. Now, you went in the house: Is that right?

THE COURT: Will you repeat those names for me? I didn't get them.

MR. JIROLANIO: If your Honor please, would it be possible to get the exact date?

Q. Homer Smickley also?

MR. JIROLANIO: I'd like to get the exact date, if possible, from this gentleman, for the reason that my client is charged on just—

MR. PALMER: One time.

MR. JIROLANIO: Yes, and I don't know just which one. Not that I am trying to—

MR. PALMER: No, that's right.

Q. Now, getting back to that summer—that is, last summer—at the time you went to this place, is there anything that happened to you that would help you fix the date or the approximate time that you went to this place?

A. No.

Q. Did you suffer any injury in the slate quarry last summer?

A. Yes, sir.

Q. And what month was that: Do you remember?

A. I think it was in May.

MR. JIROLANIO: If your Honor please, I'll object to this as being irrelevant. This is in May, and this thing is supposed to have—

MR. PALMER: He's asked me to help him fix the date. That's what I am trying to do.

MR. JIROLANIO: All right. I'll withdraw my objection.

Q. Now, did you go to Randall's house on these two occasions after or before you were hurt at the quarry?

A. After.

Q. And was it immediately after or a month or two or three?

A. No. It was a month after.

Q. A month after. So that would be when: In June, July, August, September—when?

A. It must have been sometime in July.

Q. It must have been sometime in July, 1955: Is that correct?

A. I believe it.

Q. Now, the first time you went there, to the Randall house, was Sofie Wofsie there?

A. Yes, sir.

Q. So that in addition to the other people that you mentioned, Sofie Wofsie was there too: Is that correct?

A. Yes, sir.

Q. Now, will you tell us what happened, what you did, what you saw, when you went in that house the first time?

A. Well, I went in, and they were drinking beer in there, and they offered me a can, and I took it.

Q. Now, who offered you a can of beer?

A. Mr. Randall.

Q. This Defendant?

A. Yes, sir.

Q. And you say some of the others were drinking?

A. All of the others.

Q. All of the others. And by "The others" you mean who?

A. Emma Wentzell and Geraldine and Esther and Hermina Heatter.

Q. And what were they drinking, if you know?

A. Beer.

Q. All right. Now, did you drink the beer that Randall gave you?

A. Yes, sir.

Q. All right. Go ahead. Then what happened?

A. And then they had whiskey there, and I was drinking whiskey and a couple shots of whiskey, and I had some beer.

Q. Where did you get the whiskey?

A. From back there. They had it on the table.

Q. Where?

A. Back at Randall's house.

Q. In what room of Randall's house?

A. In the kitchen.

Q. And were they all in the kitchen?

A. Yes, sir.

Q. Did you or did you not observe any of the others have a drink of whiskey?

MR. JIROLANIO: May we have the names of those he is speaking of?

A. What do you mean by that?

Q. Well, you say you had some whiskey: Is that right?

A. Yes, sir.

Q. Now, did anybody else have some whiskey?

A. They all had a shot of Seagram 7.

Q. And by "All" who do you mean?

A. Emma Wentzel, Esther Frable, Geraldine, and Hermina Heatter.

Q. How about Smickley?

A. He had whiskey too.

Q. How about Sofie Wofsie?

A. I don't know if she had any.

Q. You don't know. All right. Now, go ahead and tell us then what happened.

A. I was there for about an hour and a half. Then I went home.

Q. Now, while you were there, how was Robert Randall dressed?

A. With a pair of pajamas on, and his privates were hanging out.

Q. Were his pants torn, or were his flies open?

A. No, sir. The fly was open.

Q. The fly was open. And where was he? Was he walking, or was he seated?

A. He was walking, and he was seated.

Q. In what room?

A. In the kitchen.

Q. And who else was present when he was walking with his privates exposed, hanging out of his pajamas? Who else was there?

A. All of us.

Q. By "All of us" who do you mean?

A. Emma Wentzell and Esther Frable and Hermina Heatter, and Geraldine, and myself, and Sofie, and Homer Smickley.

Q. Did he have the tops of his pajamas on?

A. No. He just had a shirt on.

Q. Now, how was Sofie Wofsie dressed?

A. With a pair of those shortie-short pajamas and a pajama top. That's real—

THE COURT: Shortie pajamas?

THE WITNESS: Shortie-shorts. That's real short ones.

Q. Now, do you recall anything that Randall said on that occasion?

A. Well, he said if, to these girls, that if their boyfriend takes them out, that they shouldn't order Seagram 7, they should order Vodka.

Q. Did he say anything else, that you recall?

A. Not that I recall.

Q. Did you hear him say anything to the girls, anything else to the girls?

A. No.

Q. On that occasion, the first time?

A. No, sir.

Q. Now, you say you were there—what, for about an hour?

A. About an hour and a half.

Q. About an hour and a half. And then where did you go?

A. I went home.

Q. And what happened to you when you got home?

A. Well, I was pretty sick when I got home.

Q. And what were you sick from, if you know?

A. Why, I was sick from that beer and that whiskey, mixing.

Q. You didn't have any Vodka, did you?

A. Oh, yes.

Q. You had Vodka too?

A. Yes.

Q. That first day you were there?

A. Yes.

Q. How many shots of Vodka did you have?

A. I had about two of them.

Q. Now, I think you said you went back another time: Is that right?

A. The next day.

Q. The next day, and about what time did you get there the second day?

A. Oh, it must have been about one-thirty.

Q. In the afternoon?

A. Yes, sir.

Q. And who was there when you arrived that day?

A. Well, Emma Wentzel was there and Esther Frable.

Q. And was the Defendant there, Mr. Randall?

A. Yes, sir.

Q. And was Sofie Wofsie there?

A. I don't believe it.

Q. Now, what happened on that day?

A. Why, they were the same as always.

Q. Well, what happened?

A. They had been drinking there.

Q. Who was drinking?

A. Emma and Esther and Geraldine and myself. I had, and this Jackie Marsh. We had a can of beer, and then we left.

Q. You only had a can of beer that day?

A. Yes, sir.

Q. Now, how was Robert Randall dressed on that occasion?

A. He had a pair of slacks on.

Q. And what did he have around his chest? Did he have a shirt on or what?

A. T-shirt.

Q. Now, did you hear any of his talk on that occasion, to any of these girls?

A. No, sir, I don't remember.

Q. What?

A. I couldn't remember.

Q. Now, did you at any time see this Defendant, Robert Randall, in any way touch Hermina Heatter?

MR. JIROLANIO: If your Honor please, I object to that question as being leading. I think the question was asked before, "What did he do?" and he could ask it in that manner.

THE COURT: The objection is overruled.

MR. JIROLANIO: Exception.

(Exception noted.)

Q. Did you at any time see him touch Hermina Heatter?

A. No, I didn't.

Q. You did not?

A. No, sir.

Q. Did you at any time see this Defendant touch any of those other girls that were there?

A. Not that I can recall.

Q. Did you at any time hear this Defendant, in the presence of yourself and these other girls, swear or make any dirty or evil remarks?

A. No, sir.

MR. PALMER: That's all. Cross-examine.

Cross-Examination

BY MR. JIROLANIO:

Q. Now, your first name is Charles?

A. Yes, sir.

Q. Charles, on the first time that you were there, I believe you said it was sometime in July.

A. I couldn't recall the date, but—

Q. Do you know that it was in the month of July, sir?

A. No, sir.

Q. You don't know whether it was the month of July. Can't you fix the first time that you went there by any particular thing that happened around that time?

A. No.

Q. Do you remember when we had a rather bad rainstorm and flood in and near Wind Gap and in the Pocono Mountains last year?

A. Yes, but I couldn't recall.

Q. Do you remember reading or hearing about that bad flood?

A. I'm pretty sure it was right around in there.

Q. It was right around in there. Now, if I were to tell you that the bad flood was sometime in August, about the 19th, would that help you to refresh your mind as to the time and as to the month?

A. I don't believe it.

Q. Are you sure that on the first time that you went to the Randall home, that you saw Miss Wofsie there, the first time you went?

A. I'm pretty sure.

Q. All right. Now, Charles, do you know whether or not you saw any men working around the Randall home on the first time that you were there, sir?

A. Yes, sir.

Q. And do you know whether or not there were two plumbers working around there that day?

A. Yes, there was two plumbers.

Q. If I call them to stand, would you be able to recognize them?

A. I don't know.

MR. JIROLANIO (to the audience): The two plumbers that were there that day, will you stand up? I don't remember their names. (Two gentlemen rise.) What's your name, sir?

A VOICE: Elmer Frantz.

MR. JIROLANIO: And yours?

A VOICE: Maynard Sterner.

Q. Now, Charles, do you remember seeing those two men there?

A. I remember the one guy.

Q. You remember one. Which one, sir?

A. This one over here (indicating).

Q. This one over here: Elmer. All right. So that these two men were also on the premises: Is that right? Do you know whether or not they had something to drink?

A. Mr. Randall called them in, and they had a can of beer.

Q. Was the beer there when you got there, and the other alcoholic beverages, do you know?

A. No. Homer Smickley went out and got them.

Q. Well, then do I understand: You were there, and then after you were there, some time, Homer Smickley went out and bought some?

A. Homer Smickley was leaving when I come, when I come there, to go out to get this beer.

Q. When did Homer Smickley go out and get this stuff that was drunk?

A. While I was there.

Q. While you were there?

A. Yes, sir.

Q. Now, you said something about the dress of Randall on the first occasion. I think you said that he had a T-shirt on, did you not?

A. Yes, sir.

Q. And you also said something about having a pair of pajamas: Is that right?

A. Yes, sir.

Q. Do you know whether or not the clothes that he was wearing that day was a pair of pajamas, or was it one of these overalls that they wear when they work?

A. It was more like a pair of pajamas.

Q. Well, are you positive it was a pair of pajamas?

A. I'm pretty sure it is.

Q. All right. And in this attire you say his privates were exposed?

A. Yes, sir.

Q. Well, were his privates always exposed, Charles?

A. Not all the time.

Q. Did anybody call his attention to the condition that he was in, do you know, at that time?

A. I don't remember.

Q. Now, about this beer and Vodka and whiskey that you drank, did you ask for this?

A. No, sir.

Q. He offered it to you voluntarily?

A. Yes, sir.

Q. He didn't try to charge you for it or anything else?

A. No, sir.

Q. Now, had you known Randall before?

A. Yes, sir.

Q. And was this a friendly call that you had called on his house?

A. Yes, sir.

Q. A social call: Is that it?

A. Yes, sir.

Q. Tell me: Had you drunk beer before this too?

A. Yes, sir.

Q. And I suppose that you had some whiskey to drink before this too?

A. Yes, sir.

Q. So that this wasn't your first tour of drinking beer and drinking whiskey?

A. No, sir.

Q. And had you drunk beer and whiskey on many, many other occasions?

A. Not too many. I drank beer many other occasions but not whiskey.

Q. That's all. Thank you.

GERALDINE TOMSIC MILLER called as a witness on behalf of the Commonwealth and sworn.

Direct Examination

BY MR. PALMER:

Q. What is your name?

A. Geraldine Miller.

Q. And you are married, are you not, Mrs. Miller?

A. Yes.

Q. When did you get married?

A. November 5th.

Q. 1955?

A. Yes.

Q. Before you were married, what was your last name?

A. Geraldine Tomsic.

Q. And are you the sister of Charles Tomsic?

A. Yes.

Q. How old are you now, Mrs. Miller?

A. 16.

Q. When were you 16?

A. March the 6th.

Q. So that you were 16 during last summer: Is that correct?

A. Yes.

Q. Now, Mrs. Miller, do you know this Defendant, Mr. Randall, this gentleman seated right over here?

A. Yes.

Q. How long have you known him, if you know?

A. I don't know.

Q. Did you know him last summer?

A. Yes, I believe I did.

Q. Did you have occasion to go to his home?

A. No.

Q. You were never in his home?

A. Yes, I was there.

Q. Yes. When were you there?

A. August or either September.

Q. I beg your pardon?

A. It was in either August or September.

Q. Of last year?

A. Yes.

Q. And how many times were you there?

A. I was there about three or four.

Q. About three or four times. Now, let's go back to the first time you were there, if you will. Did you go there alone, or did you go there with someone else?

A. I went with Emma Wentzel.

Q. And how old is she, if you know?

A. I think she's 15.

Q. And with anybody else, the first time you went?

A. No.

Q. And about what time of day was it when you got there?

A. It was around two-thirty.

Q. In the afternoon?

A. Yes.

Q. And who was there when you arrived?

A. Homer Smickley and Randall and two plumbers.

Q. There were two plumbers there: Is that right?

A. Yes.

Q. Now, how was Randall dressed that first time when you got there?

A. He had his, a brown suit on, I think it was.

Q. And what happened when you got there?

A. Well, we knocked on the door, and we went in; he said we should come in. And we had some—wine or whiskey, with lemonade in it.

Q. And who offered you that?

A. Randall.

Q. Did you take it?

A. Yes.

Q. Both of you?

A. Yes.

Q. And where were you in the house?

A. In the kitchen.

Q. How long did you stay there that time?

A. Till around, it was around four o'clock.

Q. And did you talk to Randall on that time?

A. Yes.

Q. Do you remember any of the conversation?

A. No, I don't remember.

Q. Now, did you go back—you say you went there three or four times: Is that right?

A. Yes.

Q. Now, tell us about the next time you went, please, who you went with, and what time of day it was.

A. It was around three the next time.

Q. About three in the afternoon?

A. Yes.

Q. And who were you with?

A. With Emma and Esther.

Q. Emma and Esther who?

A. Esther Frable.

Q. And how old is Esther Frable?

A. I think she's 15 too.

Q. Right. What happened when you got there?

A. Well, we sat in the yard there, and we was talking to that other guy that stays with Randall, Peyton.

Q. Smickley?

A. No, it was some other colored guy was there; Peyton. And we sat there talking to him, and then Randall came out, and we were sitting in the yard talking.

Q. And what were you talking about, if you remember?

A. I don't—I don't recall what it was.

THE COURT: You tell us what he said and what you said.

THE WITNESS: I think we asked him for a cigarette. Then he went in the house, and he got cigarettes and come out and gave us each a pack.

Q. Did you have any other conversation with him?

A. I don't believe it. After we had—after we got cigarettes, we went then.

Q. Did you have anything to drink?

A. Not that day.

Q. All right. Now, how about the next time you went? About what time was it of the day?

A. I think it was around two-thirty.

Q. And who did you go with?

A. Emma and Esther. We went together.

THE COURT: Who?

THE WITNESS: Emma Wentzel and Esther Frable.

Q. And who was there when you arrived?

A. Sofie—Sophia Wofsie and Randall and Homer Smickley.

Q. And what happened? Did you go into the house on this occasion?

A. Yes. We were out first, and Randall said we should come in, he wanted us to meet somebody. We went in, and he took us upstairs and introduced us to Sophia.

Q. And Sophia is this lady over here?

A. Yes.

Q. Now, where was she?

A. She was up in the bedroom.

Q. Whose bedroom, if you know?

A. I don't know who. I guess it was Randall's. I don't know.

Q. Do you know whose bedroom it was?

A. I don't know.

Q. You don't know. All right. Now, where was she in the bedroom when you went upstairs?

A. She was laying in bed.

Q. And how was she dressed?

A. She had a short pair of night—pajamas on.

Q. At the time you first walked into the room?

A. Yes.

Q. Is that correct?

A. No, when we first walked in, she—she didn't have anything on.

Q. And did she have any covers over her?

A. She had pants on and her bra.

Q. Well, I thought you said she didn't have anything on when you first went in.

A. Well, I meant her pants and her bra.

Q. Well, did she or didn't she have anything on?

A. She did, yes. She had her pants and her bra on.

Q. When you first walked into the room: Is that correct?

A. Yes.

Q. Now, who was with you when you walked into the room?

A. Emma Wentzel and Esther Frable and Hermina Heatter.

Q. Now, then what happened? You were up there. Now, was Randall with her up in the bedroom?

A. Yes.

MR. JIROLANIO: Now, if your Honor please, I object to that question.

THE COURT: The objection is overruled.

MR. JIROLANIO: I ask for an exception.

THE COURT: The objection is overruled.

MR. FISHBONE: May we have an exception, your Honor?

THE COURT: The objection is overruled.

(Exception noted.)

Q. Was Randall with her?

A. Yes. He was up in the room.

Q. Well, now, was he downstairs when you arrived, or was he upstairs, if you know?

A. He was upstairs, and he hollered out the upstairs window, he wanted us to come up, he wanted us to meet her.

Q. Now, when you went upstairs, where was Randall?

A. He was standing at the hall, showing us the way up; up the top of the steps he was standing.

Q. Now, you say you went into the bedroom: Is that right?

A. Yes.

Q. And where was Randall when you went into the bedroom?

A. He was standing by the cupboard.

Q. In what room?

A. In the same room where Sofie was.

Q. How was he dressed on that occasion?

A. He had a pair of pajamas on, that's all.

Q. All right. Then what happened? You were upstairs with these girls: Is that correct?

A. Yes.

Q. And then what happened?

A. She put a pair of shortie-short pajamas on, and then we went downstairs, and we were drinking downstairs.

Q. And by "Drinking"—what did you have to drink?

A. I had beer, and I had Vodka.

Q. Vodka. And who gave you that?

A. Well, Randall gave us the Vodka, and Sophia gave us some, and then they gave us beer.

Q. Now, how was Randall dressed when you were downstairs drinking?

A. He had a pair of pajamas on. They were all torn.

Q. And where were they torn?

A. In the front.

Q. In the front. Where?

A. By his privates.

Q. What, if anything, did you observe, where they were torn? What did you see, where they were torn?

A. What did we see—well, you could see everything.

Q. Could you see his privates?

A. Yes.

Q. Now, did you talk to Randall on that occasion, when you were downstairs?

A. Yes, we were all talking with him.

Q. And tell us, please, what he said, to the best of your recollection.

A. Well, he was saying if we go out with our boyfriend, we should order that Vodka.

Q. What? I couldn't hear.

A. He said when we go out with our boyfriends, we should order that Vodka because it was a good drink and everything. He said we shouldn't get beer or anything, because Vodka was good.

Q. And did he say anything else, do you remember?

A. Not that I remember.

Q. What was he talking about?

THE COURT: Tell us to the best of your recollection what he said about anything at all.

A. I don't remember what we were talking about.

Q. Do you remember whether or not he used any dirty words or profane language?

A. I don't recall any.

Q. You don't recall?

A. No.

Q. Do you recall any conversation, anything he might have said to Emma?

A. Not that I know of. He just wanted us to come and sit on his lap.

Q. He just wanted you to what?

A. Sit on his lap.

THE COURT: Come and sit on his lap.

Q. Did he ask you to do that?

A. He asked me and Esther.

Q. Did you?

A. No, we didn't.

Q. Now, when he asked you to come sit on his lap, how was he dressed?

A. He had the pajamas on yet.

Q. Torn pajamas?

A. Yes.

Q. Now, did you go there again after that?

A. We went there the next day.

Q. Now, about what time did you get there the next day?

A It was around dinner time.

Q. By dinner time—

A. Yes.

Q. —what do you mean?

A. About noon.

Q. Noon. And who was there when you arrived?

A. Esther and Richard Achenbach.

Q. And who was with you?

A. I went with my brother, Charlie, and Jackie Marsh.

Q. And tell us, please, what happened when you got there.

MR. JIROLANIO: If your Honor please—

A. When we got there—

MR. PALMER: Just a minute.

MR. JIROLANIO: Could we have a date set?

THE COURT: If you have any objection, make your objection.

MR. JIROLANIO: I'd like to—

MR. PALMER: She said that this was in August or September.

MR. JIROLANIO: I'd like to be a little more definite, if your Honor pleases. It's kind of difficult to work a defense on either August or September.

THE COURT: August and September is—

MR. JIROLANIO: Two big months.

THE COURT: —within the period.

MR. JIROLANIO: I know it is, but we'd like to have it stated, if it is possible.

MR. PALMER: I'll try to get it from her.

Q. Now, you say you were there about what—about four times?

A. Around three it was.

Q. About three?

A. Yes.

Q. And do you remember when it was, what was the date, or what were the dates?

A. It was in August or September, the 24th—

Q. The 24th of what, August, or the 24th of September?

A. I don't know which month it was. I don't know.

Q. It was the 24th of one of those two months: Is that right?

A. Yes, or either the 25th.

Q. Or the 25th. Now, this last time you went there, you got there around dinner time: Is that correct?

A. Yes.

Q. Tell us, please, what happened when you got there that time.

A. Well, when we got there, they gave Jackie and my brother some beer. So we sat there a while and were talking, and then we went home.

Q. Did you have any conversation with him at that time? Did you talk with him?

A. No. He just offered us money to come over there and to kiss him that day; he said he would give us money.

Q. How much money, did he say?

A. It was around twenty-five or fifty dollars.

THE COURT: To do what?

THE WITNESS: To kiss him.

Q. Who did he offer that to?

A. To Esther Frable and Emma Wentzel and me.

Q. Did you kiss him?

A. No.

Q. Did he say anything else to you like that, kissing or anything

A. No. He was just fooling around then.

Q. Now, by "Fooling around" what do you mean?

A. He was trying to fool around our breasts.

Q. Your breasts?

A. Yes, and Esther's.

THE COURT: What did he do?

MR. PALMER: I will ask that, sir.

Q. Now, you say he tried to fool around your breasts. What did he do?

A. Well, he took his—

Q. To you.

A. He took me around the neck, and he grabbed me.

Q. He did what?

A. Grabbed our breasts.

Q. What—grabbed your breasts?

A. Yes.

Q. With his hands?

A. Yes.

Q. Did he have one hand around your neck, you say?

A. Yes.

Q. Which arm did he have around your neck?

A. I don't recall which arm it was.

Q. And which breast did he touch or grab?

A. He touched my left one.

Q. Your left breast?

A. Yes.

Q. And by "Touch"—how did he touch you?

A. He grabbed me.

Q. What did you do when he did that?

A. Then we ran over to the door.

Q. And then what happened?

A. We waited a while, and we all left then.

Q. Now, did you observe him do that to any of the other girls?

A. Well, he was fooling around all of us.

Q. Now, by "'Fooling around" what do you mean?

A. Trying to fool around with the others' breasts too.

Q. Now, by "Trying to fool around"—did he touch any of the other girls' breasts?

A. Not that I recall.

Q. Well, what do you mean, then, when you say he tried to fool around?

A. Well, he was—he chased them at the door, went to get us.

Q. Now, is that the last time you were over there?

A. Yes.

Q. Did he ever say anything to you about his bedroom?

MR. JIROLANIO: If your Honor please, I object to that as being leading.

A. No.

THE COURT: The objection is overruled.

MR. JIROLANIO: I ask for an exception.

MR. PALMER: The answer is "No".

THE COURT: It can be answered yes or no.

Q. Did he ever say anything to you about upstairs?

A. No, he didn't.

Q. Did he at any time ask you to have an affair with him or anything like that?

A. No.

Q. He did not?

A. No.

Q. Do you know what I mean when I say "Affair"?

A. Yes.

MR. PALMER: Your Honor, I plead surprise and ask leave to cross-examine this witness, based upon this statement, sir. (Mr. Palmer presents paper to the Court.)

THE COURT: Why don't you ask her about this? You don't have to plead surprise to ask her about that. You can show it to her and ask her whether she saw it, whether it is her statement.

Q. I show you a paper that's been marked Commonwealth's Exhibit No. 1, and I ask you to take a look at that.

MR. JIROLANIO: If your Honor please, I object to it.

THE COURT: For whom are you objecting?

MR. JIROLANIO: For both.

MR. FISHBONE: That's correct.

THE COURT: Well, if you represent both, then state it on the record. As the record now stands, you represent only one.

MR. JIROLANIO: Yes, and they told me to go ahead in their behalf, and it's all right.

THE COURT: Well, make your statement for the record. State whom you represent.

MR. JIROLANIO: I represent both parties. If your Honor please, I object to the District Attorney at this time showing an exhibit to the witness.

THE COURT: The objection is overruled.

MR. JIROLANIO: I ask for an exception, sir.

(Exception noted for Defendants.)

Q. Now, have you ever seen this before?
A. Yes.
Q. Where did you see that?
A. At the house.
Q. Whose house?
A. Minnie Heimer's house.

Q. Who is that?

A. Some lady out in Wind Gap I was baby-sitting for.

Q. And whose handwriting is that?

A. Mine.

Q. Did you write this?

A. Yes.

Q. When, do you remember?

A. No, I don't remember.

Q. Well, was it after you had been to the Randall house or before you were there?

A. It was after I was there.

Q. About how long after, if you remember?

A. I don't remember.

Q. Well, was it a week ago, was it before you were married or after you were married?

A. Before.

Q. Before you were married, and you were married in November, on November the 5th: Is that right?

A. Yes.

Q. 1955. Now, the things you said in there, were they true?

MR. JIROLANIO: I object, if your Honor pleases.

A. Yes.

MR. JIROLANIO: I object, if your Honor pleases, as being incompetent, irrelevant, and immaterial.

THE COURT: The objection is sustained but not for that reason.

MR. JIROLANIO: As long as it is sustained, I am satisfied.

(Exception noted for the Commonwealth.)

Q. Now, I'll ask you to read that statement, to yourself. Read it to yourself. (Witness looks at exhibit.) Have you read it?

A. Yes.

Q. Now, Mrs. Miller, I will ~~ask you~~ again whether or not this Defendant at any time ever suggested that you have an affair with him.

A. He never asked me.

Q. He never asked you that?

A. No.

Q. Well, now, you say that despite what's contained in this statement?

MR. JIROLANIO: I object to that, if your Honor please, as being incompetent, irrelevant, and immaterial.

THE COURT: The objection is overruled.

(Exception noted for Defendants.)

Q. Is that correct?

A. Yes.

MR. PALMER: Well, I ask leave to cross-examine, sir. I plead surprise. I've got the statement.

THE COURT: To whom was that statement made?

Q. To whom did you make this statement? Whom did you give it to?

A. I don't know who it was.

Q. You don't know who it was?

A. I don't know who the guy was that—

Q. Well, is he in court now?

A. I don't—I don't know what he looks like.

Q. Well, was it a police officer, or who was it? Do you have any idea?

A. I believe it was—

Q. One of these gentlemen?

A. Yes, Cavanaugh.

Q. What: This one?

THE COURT: Cavanaugh.

Q. Mr. Cavanaugh?

A. Yes.

Q. This gentleman?

THE COURT: I think she mentioned his name.

Q. Now, did you write this statement out yourself?

A. Yes.

Q. Did anybody tell you what to put in it?

A. No.

Q. Well, how did you know what to put in it?

A. Well, I wrote what was, what happened.

Q. Now, do you know what intercourse is?

A. Yes.

Q. Sexual intercourse?

A. Yes.

Q. At any time did this Defendant ask you to have sexual intercourse with him?

A. No.

MR. JIROLANIO: I object to that, if your Honor please, as being—

Q. He did not: Is that right?

A. No.

Q. Do you know what the word f-u-c-k means?

A. Yes.

Q. Now, is the word f-u-c-k written in this statement?

A. Yes.

MR. JIROLANIO: If your Honor please, I object to that. The statement is not in evidence. It's merely for identification, sir.

THE COURT: The objection is overruled.

MR. JIROLANIO: I ask for an exception.

(Exception noted for Defendants.)

Q. Is it there?

A. Yes.

Q. Now, does that word mean the same as sexual intercourse to you?

A. Yes.

THE COURT: The District Attorney has pleaded surprise, to which there was no objection. He is now cross-examining.

MR. JIROLANIO: I did object, if your Honor please.

THE COURT: Not to the plea of surprise. There was no objection to it.

Q. What happened—

MR. JIROLANIO: Well, if your Honor please, I object to it now.

THE COURT: You may proceed.

Q. In that statement, at the time you made that statement, did you say in that statement that he, that Randall had asked you to f-u-c-k with him?

MR. JIROLANIO: If your Honor please, I object to that for two reasons.

THE COURT: The objection is overruled. (Exception noted for Defendants.)

MR. JIROLANIO: May I put the reasons on?

THE COURT: Your objection is on the record. You may proceed.

MR. JIROLANIO: One is hearsay, and the second—

THE COURT: You may proceed, Mr. Palmer.

Q. Did you put in that statement?

A. Yes.

Q. Did he ask you that?

A. Well, he was asking all of us everything.

MR. JIROLANIO: I object to that question as being repetition.

THE COURT: The objection is overruled. (Exception noted for Defendants.)

THE COURT: Will you read her answer? (Stenographer reads last answer.)

Q. Did he ask you to f-u-c-k him?

A. Yes.

Q. He did. When did he ask you that?

A. That day when we were all drinking, on a Friday.

Q. On a Friday?

MR. JIROLANIO: May I have the date, if your Honor please? Now—

THE COURT: You may proceed, Mr. Palmer.

MR. JIROLANIO: May I have the date, sir, if your Honor please?

MR. PALMER: It is still in August or September, sir. I mean we have gone over that.

Q. Was this in August or September?

A. Yes.

Q. Do you remember the exact date?

A. On a Friday, it was, when we were there all drinking.

Q. Who else was there?

A. Well, my brother Charles, Emma Wentzel, Esther Frable, and Jackie Marsh, and Josephine Wofsie.

Q. Was that the last time you were there?

A. No, the next day we were there.

Q. Oh, it was the time before the last time?

A. Yes.

Q. And what did you say when he asked you to f-u-c-k him?

A. We didn't say nothing. We told him—

Q. Well, what did you say?

A. I didn't say anything to him.

Q. And in your presence did he ask any of the other girls to f-u-c-k him?

A. Yes.

Q. Who?

A. Emma and Esther.

Q. What did they say?

A. They didn't say anything.

Q. Now, when he asked you this, how was he dressed?

A. He had those pajamas on; they were torn.

Q. Now, did he ask anybody, in your presence, on that occasion to go upstairs with him?

A. The only time he asked us was to go up and meet Sophia.

Q. Do you remember whether or not he asked Emma to go upstairs with him?

A. I—he asked her to go up, to—to bring Sophia down that time.

Q. Did she go?

A. I don't believe she did.

Q. Do you recall whether or not Emma went upstairs to the bathroom?

A. Yes, she went up several times.

Q. And who else, if anybody, went upstairs too when she was up there?

A. Later on Randall went up.

Q. When Emma was there?

A. Yes. When she was coming down, then he was going—he went up.

MR. JIROLANIO: If your Honor pleases, is this the same day, the same Friday that we are talking about?

THE WITNESS: Yes.

MR. JIROLANIO: When Sofie Wofsie was there?

THE WITNESS: Yes.

Q. Were they upstairs together, Randall and Emma?

THE COURT: You will have an opportunity to cross-examine this witness, Mr. Jirolanio.

MR. JIROLANIO: I'd like to know what the dates are, if your Honor please.

THE COURT: All right. You can ask for it.

Q. Were they upstairs together?

MR. JIROLANIO: I object to that, if your Honor please.

THE COURT: The objection is overruled.

(Exception noted for Defendants.)

A. I believe she was in the bathroom and he was in his bedroom.

MR. PALMER: Cross-examine.

THE COURT: We will recess at this time until one-thirty.

At this point court recesses to Tuesday afternoon, February 14, 1956, at half past one o'clock.

Geraldine T. Miller—Cross

Pursuant to recess court convenes Tuesday afternoon, February 14, 1956, at half past one o'clock.

Cross-Examination

BY MR. JIROLANIO:

Q. Your name is Mrs. Miller?

A. Yes.

Q. How long have you known Randall?

A. Since the past summer.

Q. Past summer. When was the first time that you went to the Randall residence?

A. It was around in July.

Q. July. And when was the next time you went there?

A. In August or September.

Q. And September—or September?

A. Or September.

Q. Can you associate your visits to Randall's residence with any particular thing that occurred?

A. (No answer.)

Q. May I make it more plain?

A. Yes.

Q. Do you remember the hard rains and floods that we had in August of 1955?

A. Yes.

Q. Now, can you associate the time that you visited the Randall home as being close or in the very day that the floods took place, if you can?

A. I believe it was after the floods.

Q. After the flood?

A. Yes.

Q. Would it help you any to remind you that on one day that you were there, that it was on a Friday?

A. Yes.

Q. And it had rained hard the night before and early Friday morning; and we had floods in the area of Wind Gap and Monroe County all Friday morning and part of Friday afternoon? Do you remember that?

A. Yes, I remember it, but—

Q. Do you remember whether it wasn't that particular Friday afternoon that you had made a visit or called at the Randall residence?

A. No.

Q. Beg your pardon?

A. No.

Q. You don't recall that?

A. (Witness nods negatively.)

Q. You don't know whether it was or don't know whether it—

A. I don't believe it was.

Q. You don't believe it was?

A. No.

Q. Now, Mrs. Miller, you did testify that on one occasion you saw some plumbers there: Is that correct?

A. Yes.

MR. JIROLANIO (To the audience): Will the two plumbers stand up? (Two gentlemen rise.)

Q. Do you know whether any one of those two

gentlemen were the men who were there, if you know?

A. I believe it is.

Q. And on how many occasions did you see them there, do you know?

A. One it was.

Q. Once. And was it on that particular occasion that you also saw Mrs. Wofsie, Miss Wofsie there?

A. Yes.

Q. Was that the only occasion that you saw Mrs. Wofsie?

A. Yes.

Q. So, that the only time that you saw Mrs. Wofsie was the day when you also saw some plumbers there?

A. Yes.

Q. And you had been at the Randall residence prior to the particular day that you saw Mrs. Wofsie there: Is that correct?

A. Yes.

Q. How much time before that was it that you had visited the Randall home? I am now speaking of the day when you saw the plumbers.

A. Do you mean before that?

Q. Yes. How many days before that, in weeks or months, if you can remember, Mrs. Miller?

A. I don't recall.

Q. You don't recall?

A. No.

Q. Now, you testified before on direct examination, that you had been to the Randall home on the day before you saw Mrs. Wofsie and on the day after?

A. The day after.

Q. How about the day before?

A. No. We didn't go up there then.

Q. So you are sure about that: It wasn't the day before, but you were there the day after?

A. Yes.

Q. Now, on the first occasion that you visited Randall's home, who were you with?

A. Emma Wentzel.

Q. And who did you see at the Randall home?

A. Randall and Homer.

Q. Randall and who?

A. Homer.

Q. Homer. Homer who?

A. Smickley.

Q. Homer Smickley. Did you at any time see an old gentleman by the name of Payne?

A. Peyton.

Q. Peyton. Yes. And is he rather an old man?

A. Yes.

Q. Now, on the first occasion that you were there, you say you were with another girl?

A. Yes.

Q. And was that the first time that you went there?

A. Yes.

Q. What was that occasion of going there?

A. Just up to visit him.

Q. Just happened to visit him?

A. Yes.

Q. Well, had you known him before that?

A. No, but Emma did.

Q. And you were going then with Emma: Is that correct?

A. Yes.

Q. Now, on this occasion did anything happen?

A. We had some wine or it was whiskey, with lemonade in it.

Q. You had some water?

A. Whiskey or wine with lemonade in it.

Q. Whiskey or wine with lemonade?

A. Yes.

Q. Are you sure which one it was, whiskey or wine?

A. I'm not sure what it was. I believe it was wine.

Q. You believe it was wine?

A. Yes.

Q. With lemonade?

A. Yes.

Q. Was it a hot day?

A. Yes, sir.

Q. And was this given to you as a means of refreshment, to cool you off a little bit?

MR. PALMER: I object to that.

THE COURT: The objection is sustained.

(Exception noted for Defendants.)

Q. Did you ask for a drink that particular day?

A. No.

Q. Was it warm, and could you stand a drink?

A. Yes.

Q. And was it because of the way you felt, that the weather—that you were given this refreshment, whatever it was, wine or whiskey with some lemon?

MR. PALMER: I object, sir.

THE COURT: The objection is sustained.

(Exception noted for Defendants.)

Q. Now, did you drink what was given to you that day?

A. Yes.

Q. And then what else happened, if anything?

A. We just had a couple glasses, and then we went.

Q. And then you went?

A. Yes.

Q. Nothing happened that particular day?

A. No.

Q. Now, then the next time you came back was the day that you saw the numbers?

A. Yes.

Q. And that was the day that Mrs. Wofsie was also there?

A. Yes.

Q. And who did you come with then?

A. Emma and Esther.

Q. Emma and Esther?

A. Yes.

Q. Anybody else?

A. No. That was all.

Q. Nobody else at all?

A. No, not that day.

Q. Do you have a brother?

A. Yes.

Q. What's his name?

A. Charles.

Q. Was he there that day?

A. No. He come later on, around three o'clock there.

Q. On that same day?

A. Yes.

Q. Well, then he was there that day; wasn't he?

A. Yes.

Q. Who else was there that day?

A. Just Homer Smickley and Randall and Sofie Wofsie and the two plumbers and Peyton.

Q. Now, how did you come to come there that particular day?

A. We just went up there that day.

Q. You and Emma?

A. Yes, and Esther.

Q. And Esther. And when you came on the premises that's occupied by Randall, who did you first see?

A. Peyton. He was sitting in the yard.

Q. That was the old gentleman?

A. Yes.

Q. That you spoke of. And did you have a conversation with him?

A. Emma asked if Randall was home. He said, "Randall is inside." So we knocked on the door, and he said, "Come in."

Q. He told you that Randall was inside?

A. Yes.

Q. You knocked at a door. And what door did you knock at?

A. It was the kitchen—the porch door.

Q. The porch door?

A. Yes.

Q. And that porch door then was opened?

A. The screen door was closed, but the door was open.

Q. The door was open, and who was there?

A. Randall was in the kitchen, and he hollered—

Q. Randall was in the kitchen?

A. Yes.

Q. Did he open up the screen door?

A. Yes, and then we walked in. He hollered, "Come in." So then we opened it up and went in.

Q. And who was in the kitchen?

A. Randall and Homer.

Q. Randall and Homer?

A. Yes. And Sofie was upstairs.

Q. At that time you didn't know anything about Sofie yet, did you, when you first walked into the house?

A. No. She was upstairs. He hollered out the window for us to come in.

Q. Oh. You mean while you were outside?

A. Yes.

Q. Randall hollered for you to come on inside?

A. Yes.

Q. And he did that by hollering through a window?

A. (Witness nods affirmatively.)

Q. And then you came in to the door, and you knocked at the door?

A. Yes.

Q. And then Randall left you in?

A. Yes.

Q. So that he actually told you and your girl-

friends to come in towards the kitchen or come into the house?

A. Yes.

Q. Now, what else happened?

A. He went upstairs when he hollered for us to come in, so we went up with him, up to Sofie.

Q. I don't understand that, myself; I'm sorry. Will you repeat that again?

A. When he hollered for us to come in, he come and opened the door and left us in, and then he went upstairs, and he told us to come along up, so we went up, and he introduced us to Sofie.

Q. Oh, I see. Then you came in, and then he told you to come upstairs, and he introduced you then to Sofie?

A. Yes.

Q. Isn't it a fact that before you went into the room that Sofie was at, that he knocked at Sofie's door?

A. He knocked at it before he went in?

Q. Yes, at the door to the room which Sofie was in.

A. I don't remember.

Q. You don't remember?

A. No.

Q. Then you went in the same room she was in: Is that right?

A. Yes.

Q. And he introduced you girls to Sofie?

A. Yes.

Q. At that time Sofie was lying down?

A. Yes.

Q. In a bed?

A. (Witness nods affirmatively.)

Q. And then what happened? Did you and your girlfriends go out?

A. He introduced us to her, and then she put on those shortie-short pajamas, and then we all went downstairs.

Q. What did she have on before she put on the shortie-short pajamas?

A. She had a pair of panties and a brassiere.

Q. Panties and a brassiere. Do you know whether or not they were swimming suits?

A. I don't know.

Q. Could they have been a swimming suit?

A. They might have—it could have.

Q. O.K. And then she put some other clothes on, and she came downstairs with you?

A. Yes.

Q. And then in what room did all of you go then?

A. In the kitchen.

Q. Now, what was the next thing that happened?

A. Well, Randall sent Homer out for beer, and then Homer went and got it, the beer and Vodka, and he went out and got it.

Q. Homer then sent—

A. No, Randall sent.

Q. Randall sent Homer out for beer?

A. Yes.

Q. Isn't it a fact that the beer was at this place before you girls came in?

A. There wasn't none there before we came in.

Q. So while you were there with your company, Homer came back with some beer?

A. Yes.

Q. And were all of you then sitting in the kitchen?

A. Yes.

Q. And the beer then was put on the table: Is that correct?

A. Yes.

Q. And you say that Randall sent Homer out for the beer?

A. Yes.

Q. Do you know whether or not he gave Homer any money?

A. I don't know.

Q. You don't know. All right. Now, when the beer was brought back to the Randall home, what happened then?

A. Well, Sofie opened some, and she gave us all beer, and then they opened the Vodka and gave us some of that.

THE COURT: Now, I did not get your last answer. Will you raise your voice, please?

THE WITNESS: Sophia, she opened up some beer, and they passed it out to us, and then they opened the Vodka and gave us some.

Q. Was the beer put on the kitchen table?

A. Some of it was on the kitchen table, and some was on the sink.

Q. And did then somebody open up these beer bottles?

A. Yes.

Q. Were they beer bottles or—

A. They were cans.

Q. Beer cans. And you say Sofie opened some of these cans up?

A. Yes.

Q. And she put them back on the table: Is that correct?

A. She spilled some in our glasses.

Q. She spilled some in the glasses that were there?

A. Yes.

Q. Now, there was no particular glasses for anybody at that time, was there? The glasses were just on the kitchen table, were they not?

A. No. We asked for a glass to drink it out of.

Q. Oh. In other words, the cans were first opened?

A. Yes.

Q. And put on the table. And then you asked for some glasses?

A. Yes.

Q. And then when the glasses were asked for, then somebody helped to pour that beer into the glasses?

A. Yes.

THE COURT: She said Sofie did that.

MR. JIROLANIO: Yes.

THE COURT: Not "Somebody."

MR. JIROLANIO: Somebody, happens to be Sofie, if your Honor please.

THE COURT: She said Sofie.

MR. JIROLANIO: Yes.

THE COURT: If you are going to repeat her answers, Mr. Jirolanio, repeat them correctly.

MR. JIROLANIO: If your Honor please, I'm not—

THE COURT: They should not be repeated.

MR. JIROLANIO: I'm not going to try—

THE COURT: Mr. Jirolanio, there is no need to repeat her answers. If you are going to repeat them, then repeat them accurately.

MR. JIROLANIO: I'll repeat them exactly as I asked the witness, if your Honor please.

THE COURT: You are going to repeat them, and I ask you to repeat them the way she answered.

Q. Now, you said you put these glasses on the table, did you not?

A. Yes.

Q. In the first place, I think that you said that Sofie opened up the cans and put them on the table?

A. Yes.

Q. And then you asked for some glasses?

A. Yes.

Q. Then some beer was poured into these glasses?

A. Yes.

Q. Now, what else happened?

A. Well, then they opened up the Vodka and she, her and Randall passed the Vodka around.

Q. What do you mean "She passed the Vodka around"?

A. Well, she give some to the girls, and he gave it to the boys.

Q. Whose Vodka was this?

A. Randall's.

Q. Was Sofie there just helping out in distributing this beer from these cans and also from this bottle? Was she helping to pour: Is that what she was doing?

A. Yes.

Q. Yes. Now, how was Randall dressed?

A. He had a pair of pajamas on, and they were all tore.

Q. Did you see the plumbers in the room at the time he had this same kind of wearing apparel that you are now speaking of?

A. Yes. They had the same thing.

THE COURT: They what?

THE WITNESS: He had the pajamas on when the plumbers were there.

Q. Did you hear anybody at any time call the attention of Randall to his dress and that he was exposed?

A. Yes.

Q. Who?

A. Sophia said he should cover up.

Q. Did you hear Sofie say to Mr. Randall, "You better get rid of these young kids"?

A. No, I didn't hear that.

Q. What else happened then?

A. Well, we were drinking beer and just drank Vodka, and about four o'clock we left. We were sitting there talking.

Q. And that's all that happened?

A. Yes.

Q. You are telling us now exactly everything that happened that whole afternoon, that afternoon when you saw Sofie and you saw the plumbers?

A. Yes.

Q. Nothing else happened?

A. Just that Homer—Randall was fooling around these girls.

THE COURT: I didn't get your answer. Will you raise your voice, please. What did you say?

THE WITNESS: That Randall was fooling around us girls.

Q. Now, did you come back the next day?

A. Yes.

Q. What time?

A. Around two or three it must have been.

Q. Now, tell me, Mrs. Miller: Was this the first time that you had had some beer and Vodka?

A. No.

Q. I am talking now about the time in July when you first came there.

A. That was the first time we had beer and Vodka.

Q. First time you had beer and Vodka. Had you drunk beer before?

A. Yes.

Q. Had you drunk whiskey before?

A. Not whiskey, no.

Q. Never drank whiskey before?

A. No.

Q. You never drank Vodka before?

A. (Witness nods negatively.)

Q. Do you drink it now?

A. No.

Q. Beer or whiskey?

A. No.

Q. The only time that you drank beer, then, is at Randall's place: Is that right?

A. Yes.

Q. You never drank before at all?

A. When we went out together some nights, we had some.

Q. When you went out together?

A. Yes. We had beer. Me and Emma and us girls.

Q. You yourself saw nothing wrong in drinking beer, did you, then?

A. I didn t think nothing of it.

Q. Mrs. Miller, you made some statements before to the District Attorney about Randall doing something or having to do with one of your girlfriends, or something to that effect?

A. I said I didn't know anything if he did or if he didn't.

Q. Oh. Thank you very much.

Redirect Examination

BY MR. PALMER:

Q. Now, you have said that someone poured beer and vodka in some glasses: Isn't that right?

A. Yes.

Q. And who was that that poured the beer and the vodka in the glasses out of which you drank?

A. Well, Sandy—Sophia, she poured some in, the beer, and Randall, he gave me some beer, and then Sophia gave me the vodka.

Q. She gave you the vodka?

A. Yes.

Q. Did she pour it into the glass?

A. Yes. She got another little glass out.

Q. And did she then hand you the glass?

A. Yes.

Q. Now, when you went upstairs and were introduced to Sofie—do you remember that occasion?

A. Yes.

Q. How did Randall introduce Sofie? What did he say about her?

A. He just said—he told us her name was Sandy then, and he said, "I want you to meet my friends."

Q. Your friends. Was anything said about her becoming his wife or—

MR. JIROLANIO: Objected to, if your Honor please, as incompetent, irrelevant, and immaterial.

A. He said—

MR. JIROLANIO: Just a minute.

THE COURT: The objection is sustained. What did he say?

(Exception noted for the Commonwealth.)

Q. What did he say?

A. He said—

THE COURT: Give us the whole conversation.

A. He said that he was going to get engaged to her and that's why he got the beer. He said he wanted us to have a drink. He was getting engaged to her.

Q. Now, where was he when he said that?

A. He was down in the kitchen when he told us that.

MR. JIROLANIO: If your Honor please, I object to that line of questioning on the part of the District Attorney. I cross-examined solely on what he had asked. I didn't bring out anything new.

MR. PALMER: Well, you talked about the introduction of this girl.

THE COURT: The objection is overruled.

(Exception noted for Defendants.)

MR. JIROLANIO: She brought that out originally.

THE COURT: The objection is overruled.

MR. JIROLANIO: Well, I ask for an exception. I want to explain, if your Honor pleases.

Q. Now, you told Mr. Jirolanio that on this occasion Randall was "Fooling around us girls," I think you said?

A. Yes.

Q. Now, what did you mean by that?

MR. JIROLANIO: Now, if your Honor please, I object to that because on direct examination the District Attorney—

THE COURT: The objection is overruled.

MR. JIROLANIO: I ask for an exception, as repetitious.

(Exception noted for Defendants.)

Q. What did you mean?

A. Well, he grabbed us by our breasts and stuff.

Q. That's what you meant by "Fooling around"?

A. Yes.

Q. That's all.

HERMINA HEATTER, called as a witness on behalf of the Commonwealth and sworn.

Direct Examination

BY MR. PALMER:

Q. What's your name?

A. Hermina Heatter.

Q. And how old are you?

A. Twelve.

Q. Do you go to school?

A. Um hum.

Q. What grade are you in?

A. Seventh.

Q. What school do you go to?
A. Nazareth High.
Q. Where do you live?
A. Wind Gap.
Q. Do you know Robert Randall?
A. Yes.
Q. Is he here in the courtroom?
A. Yes.
Q. Would you point to him, please?
A. (Witness indicates.)
Q. Have you ever been in his house?
A. Yes.
Q. When was the last time, if you recall, that you were in his house?
A. In August sometime.
Q. In August of 1955?
A. Um hum.
Q. Who else was there?
A. Geraldine, Emma, Esther.
Q. Now wait a minute. Geraldine Tomsic?
A. Um hum.
Q. Now Mrs. Miller: Is that right?
A. Yes.
Q. And Emma?
A. Emma Wentzel.
Q. Emma Wentzel. Who else?
A. Esther Frable.
Q. Esther Frable. Anybody else?
A. Charlie Tomsic.
Q. Yes.
A. Jackie Marsh and Homer Smickley.
Q. And where were you in the house?
A. In the kitchen.

Q. And what did you do, and what did you see when you were there that time?

A. I didn't see nothing.

Q. Did you have any refreshment, did you have any Coca-Cola or ginger ale?

A. Huh uh.

Q. Did you have any water or milk?

A. No.

Q. Did any of the other girls have anything?

A. Yes.

Q. What did they have?

A. They had beer.

Q. Had what?

A. Beer.

Q. And what girls had the beer?

A. Esther and Emma.

Q. Esther and Emma: Is that right?

A. Yes.

Q. Now, was Mr. Randall there when they got the beer?

A. Yes.

Q. Who gave them the beer?

A. (No answer.)

THE COURT: Who gave them the beer?

THE WITNESS: I don't know. I came in a couple minutes after then. I guess they got it—yes, they got it themselves.

Q. Got it themselves?

A. Um hum.

Q. Where did they get it from?

A. (No answer.)

THE COURT: Where did they get it from?

THE WITNESS: It was sitting on the table there, and they poured it out.

Q. Who poured it out?

A. Esther and Emma.

Q. Was anybody else there besides the people that you have just mentioned?

A. No.

Q. Was Sofie Wofsie there?

A. No.

Q. Not there?

A. (Witness nods negatively.)

Q. How was Mr. Randall dressed this time when you were there?

A. He had overalls on.

Q. Overalls. That's all.

MR. PALMER: Cross-examine.

MR. JIROLANIO: That's all.

BY MR. PALMER:

Q. Did you bring the beer in yourself?

A. Hum um.

Q. Was it there when you got there?

A. Yes.

Q. Who was with you when you came?

MR. JIROLANIO: Just a minute. If your Honor please, he rested, and I—

MR. PALMER: Well, he didn't cross-examine, sir.

MR. JIROLANIO: Well, I didn't—I said, "That's all."

THE COURT: Is there an objection?

MR. JIROLANIO: Yes.

THE COURT: The objection is overruled.

(Exception noted for Defendants.)

Q. Whom did you go there with?

A. Geraldine Tomsic.

Q. And how about the other girls: Were they there when you got there?

A. Yes.

MR. PALMER: O.K.

MR. FISHBONE: No questions.

ESTHER FRABLE, called as a witness on behalf of the Commonwealth and sworn.

Direct Examination

BY MR. PALMER:

Q. Your name is Esther Frable: Is that correct?

A. Yes.

Q. Where do you live, Esther?

A. Wind Gap.

Q. How old are you now?

A. Fifteen.

Q. When is your birthday?

A. September the 7th.

Q. So that last summer you were fourteen years old: Is that right?

A. Yes.

Q. Do you go to school?

A. Yes—no. I just quit.

Q. You just quit?

A. Yes.

Q. What grade were you in when you quit?

A. Eighth grade.

Q. And you live at home with your family?

A. Sometimes. But sometimes I live with my sister, who is married.

Q. And where does your married sister live?

A. Bushkill Township.

Q. And where do your mother and father live?

A. Pen Argyl. It's in Wind Gap, but it's out of the Borough of Wind Gap.

Q. Now, do you know Robert Randall?

A. Yes, I do.

Q. Is he in the courtroom now?

A. Yes, he is.

Q. Will you point to him, please?

A. Right there (indicating).

Q. Do you know Sofie Wofsie?

A. Yes.

Q. Is she in the courtroom?

A. Yes.

Q. Will you point to her, please?

A. She's in back of Randall.

Q. Now, have you ever been in Randall's home?

A. Yes.

Q. How many times?

A. Once that I can recall.

Q. And when was that?

A. I think it was August the 19th.

Q. Was that at about the time of the flood? Do you remember the flood last summer?

MR. JIROLANIO: We can agree—

A. No, I don't think it was about that time. I think it was—

MR. JIROLANIO: —the 19th.

Q. What?

A. I don't recall any flood.

Q. You don't recall?

A. After the flood I guess it was.

Q. Now, what time of the day did you go there?

A. Well, about three-thirty.

Q. Who were you with when you went there? Who did you go with?

A. With some guy that had a motorcycle.

Q. What was his name?

A. It was—

Q. Was his name Achenbach?

A. Yes.

Q. Did he go into the house with you, Achenbach?

A. Yes.

Q. Into Randall's house?

A. Yes.

Q. All right. And you went in: Is that right?

A. Yes.

Q. And who was there when you went in?

A. Well, it was Emma Wentzel, Geraldine Tomsic, and Charlie Tomsic, and Jackie Marsh.

Q. Now, did they go in with you, or were they already there?

A. Why, I think Jackie Marsh came after we were there.

Q. And how about the others? Were they there when you got there, or what happened?

A. Well, I think Emma Wentzel was there. And I'm not sure, but I think Geraldine was there, but I think Charlie came after her.

Q. I see. Now tell us, please, what happened. You came to the house: Is that right?

A. Yes.

Q. And just tell us what happened, in your own words.

A. Well, they went to get some beer.

Q. Well, were you in the house? Did you go in the house?

A. Yes.

Q. Where did you go in the house?

A. Well, we went in the room.

Q. What room?

A. I mean in the kitchen. It's right inside the door, when you go right in the door.

Q. All right. What happened when you got in there?

A. Well, they went to get some beer.

Q. Who went to get some beer?

A. I think it was Homer Smickley.

Q. Yes.

A. And—I think—I don't know, but maybe Charlie went along; but I'm not sure.

Q. All right. Now, when you first went in the kitchen, where was Randall?

A. Randall? Well, I think he was in the kitchen too or either in the living room.

Q. Was Sofie Wofsie there?

A. Yes, she was.

Q. In the house. Where was she when you first went in?

A. Well, she was in the kitchen.

Q. Yes. How was she dressed?

A. Well, she had a, her dress on and her slip and shoes and socks.

Q. Did you go upstairs in that house?

A. Yes, just to the bathroom.

Q. And who else was upstairs at the time you were upstairs?

A. Nobody that I know of. I didn't see anybody upstairs.

Q. Did you at any time see Sofie Wofsie upstairs?

A. (No answer.)

THE COURT: Did you at any time see Sofie Wofsie upstairs?

THE WITNESS: Yes, I guess she was up there once.

Q. When was she there?

A. Well—

Q. When you first got there or—

A. Yes.

MR. JIROLANIO: Please—I object to the question as being leading.

MR. PALMER: All right. I'll withdraw it.

MR. JIROLANIO: It's too late now.

Q. What was your answer: "Yes"?

A. Yes.

Q. And did you at any time see Sofie Wofsie upstairs?

A. Yes.

Q. Now tell us about that, if you will, please.

A. Well, she was up on the bed.

Q. Is that upstairs?

A. Yes.

Q. How was she dressed?

A. Well, I think she had her slip on and her pants.

Q. When you first saw her?

A. Um hum.

Q. Is that right?

A. Yes.

(Mr. Palmer produces a paper, which is marked Commonwealth's Exhibit No. 2 for the purposes of identification.)

MR. JIROLANIO (At side bar): I'd like to know for the record what the District Attorney proposes to do.

MR. PALMER: I'm going to plead surprise, sir, based upon a prior written statement of this girl. I'm going to ask her to examine it, and then I will ask whether that has refreshed her recollection. If it hasn't, then I'm going to ask leave to cross-examine on the basis of surprise.

MR. JIROLANIO: If your Honor please, I object to the thing that the District Attorney is going to attempt to do, for the reason that that is not the proper way in which to plead surprise. I don't know what he's pleading surprise to.

MR. FISHBONE: Your Honor, that is the thing that's got me puzzled.

MR. PALMER: All right. I'll make a statement for the record for that.

THE COURT: Why don't you find out whether or not it will refresh her recollection, and perhaps a plea of surprise will not be necessary.

MR. PALMER: That's right, sir. I'm willing to put it that way.

MR. JIROLANIO: If your Honor please, I further would like to object for the reason that anything that was done at that time would be hearsay as to these two Defendants.

THE COURT: The objection is overruled. You may proceed

MR. JIROLANIO: I ask for an exception.

(Exception noted for Defendants.)

Q. Now, Esther, I hand you a piece of paper marked Commonwealth's Exhibit No. 2. Now will you take a look at that, please? (Witness looks at exhibit.) Did you ever see that before?

A. Yes.

Q. Who wrote that?

A. I did.

Q. When—do you remember?

MR. JIROLANIO: I object, if your Honor please, as not being at issue.

THE COURT: The objection is overruled.

(Exception noted for Defendants.)

A. I don't remember right what day it was. I know it was in school, though.

Q. It was in school?

A. Yes.

Q. And was that written after the day you say you had been to the Randall house?

A. Yes.

Q. It was written after that day: Is that right?

A. Yes.

Q. Now you have read that, have you not?

A. Yes.

Q. Now, I will again ask you what clothing Sophia Wofsie had on when you saw her on the bed on the day you said you were at the Randall house.

MR. JIROLANIO: If your Honor pleases, I object to this unless the—

THE COURT: The objection is overruled.

(Exception noted for Defendants.)

MR. JIROLANIO: I would like to have on the record that it's repetitious.

THE COURT: The objection is overruled.

MR. JIROLANIO: I want to put it on, the reason for it.

THE COURT: I have overruled your objection. You have made it. You get an exception automatically.

MR. JIROLANIO: Thank you.

THE COURT: You do not even have to ask for it. Will you read the question to the witness?

THE STENOGRAPHER: "Now, I will again ask you what clothing Sophia Wofsie had

on when you saw her on the bed on the day you said you were at the Randall house."

Q. What did she have on when you first saw her?

A. Well, she had on pants and her slip. That's what I said before.

MR. PALMER (At side bar): Now I plead surprise, sir, and ask leave to cross-examine. Here is a written statement.

THE COURT: To whom was that statement made? You first have to show that.

MR. PALMER: All right, sir.

Q. That is in your own handwriting, is it not?

A. Yes.

Q. And did you write that of your own free will, or did someone ask you to make a statement?

A. Somebody asked me.

Q. And who was it?

A. I don't know. I think it was—I just know it was one of the detectives, or something like that, what you call them.

Q. Is he here in the courtroom? Do you see him?

A. I don't recall.

Q. You don't recall?

A. No.

Q. But it was a detective: Is that correct?

A. Yes, something like that.

Q. Something like that. Well, was it a detective or a police officer—what was it?

A. I think it was a detective.

Q. Do you remember his name?

A. No, I can't remember his name.

Q. Do you know Mr. Cavanaugh, of the State Police?

A. Yes.

Q. You do. Is he here in the courtroom? Do you see him?

A. I think he's here.

Q. Well, point him out.

MR. PALMER: Mr. Cavanaugh, stand up.

Q. Is this Mr. Cavanaugh?

A. Yes, I think so.

Q. Have you ever seen him before?

A. Yes.

Q. Was it to him that you gave the statement?

A. It might have been.

Q. Might have been. Don't you remember?

A. Well, I—I got a bad memory.

(Recess)

MR. PALMER (At side bar): Sir, I would like to plead surprise on this witness, based upon a writing which has been marked Commonwealth's Exhibit No. 2. As to the statement that this witness made that Sofie Wofsie was dressed when she saw her for the first time on the bed, I have a written statement in the girl's own handwriting, taken after the incident but prior to the trial, in which she stated, "We saw a girl named Sandra, and she was nude." And

I will show that Sandra is the same girl as Sofie Wofsie.

MR. JIROLANIO: If your Honor please, I'd like to make this objection: It doesn't actually matter what the condition—I'm talking merely for the sake of an argument—

THE COURT: It goes to the charge of corrupting the morals of minors.

MR. FISHBONE: Well, the girl isn't charged with it.

(Off-the-record discussion.)

Q. Now, Esther, before we took the recess we were talking about the time you went upstairs in the Randall house and saw Sofie Wofsie. Did you know her by any other name?

A. "Sandra" I think they called her.

Q. Now, I asked you, if you recall, whether or not she was dressed when you saw her.

A. Yes, she was dressed.

Q. She was dressed?

A. Yes.

Q. At the time you first saw her: Is that correct?

A. Yes.

Q. Well, now, in this statement marked Commonwealth's Exhibit No. 2, which I showed you and which you wrote in your own hand—

A. Yes—

Q. —you say, "We saw a girl named Sandra, and she was nude."

MR. JIROLANIO: Now, if your Honor pleases, I object to that.

THE COURT: The objection is overruled. You have pleaded surprise, and you have her under cross-examination.

MR. PALMER: Yes, sir.

(Exception noted for Defendants.)

Q. Did you not make that statement?

A. Yes, I did.

Q. Well, now, which is right?

A. What I just said now.

Q. Why did you make this statement, if it wasn't right?

A. (Pause.) Well, I guess I was—I was writing too fast, and then I got the wrong words down.

Q. What's the wrong word?

A. Nude.

Q. Now, how many times have you been in the Randall house?

A. Once or twice. I don't know, but I think it's once, though. But it could be twice.

Q. What was the last time?

A. I think August the 19th.

MR. PALMER (At side bar): May it please the Court, I have a document marked Exhibit No. 3, Commonwealth's Exhibit No. 3, which is a statement signed and sworn to by Esther Irene Frable dated October 18, 1955, in the presence of A. S. Onuschak, a Pennsylvania Liquor Control Agent, in which this witness stated as follows: "I first knew of him," re-

ferring to Robert Randall, "by talk in July. I was there in August, and I have been there at least ten times." I plead surprise and ask leave to cross-examine this witness on the number of times that she's been there to the place. She has now stated that she has only been there once or twice.

MR. JIROLANIO: I object to that, if your Honor please.

THE COURT: You may do so.

(Exception noted for Defendants.)

Q. Now, Esther, I hand you a document which has been marked Commonwealth's Exhibit No. 3 and ask you whose signature that is at the end.

A. My signature.

Q. Did you make this statement and sign it?

A. Yes.

Q. Are the contents of it true?

(Witness looks at exhibit.)

THE COURT: Read it. Read it from the beginning, and read it carefully. Take your time.

Q. To yourself. Don't read it out loud. Tell us when you are through, will you please? (Witness looks at exhibit.) Are you through?

A. Yes.

Q. Now you have read this statement, have you not?

A. Yes.

Q. Contained in this statement, referring to Robert Randall: "I first knew of him by talk in July. I was there in August."

MR. JIROLANIO: If your Honor please, I object to the learned District Attorney reading any portion of that statement.

THE COURT: The objection is overruled.

MR. JIROLANIO: Exception.

(Exception noted for Defendants.)

Q. "And I have been there at least ten times." Now, is that your statement?

A. Yes.

Q. Now, were you there twice, or were you there ten times?

THE COURT: How many times were you there?

THE WITNESS: I was only there twice.

Q. Well, then why did you make this statement saying you had been there ten times?

MR. JIROLANIO: Now, if your Honor please, that I object to. That calls for a conclusion on the part of the witness.

THE COURT: The objection is overruled.

(Exception noted for Defendants.)

Q. Why did you make this statement that you were there ten times, if you had only been there twice?

A. Well, they told me to hurry up, and I guess I was—I just agreed with them.

Q. What else did they tell you?

MR. JIROLANIO: Now just a minute. What did she use the word "Agree" to?

MR. PALMER: "They told me to hurry up, and I guess I agreed with them."

Q. What else did they tell you?

A. (Pause.) They told me to write everything I knew about it.

Q. And did you?

A. Yes.

Q. And one of the things you wrote was that you had been at Randall's house at least ten times: Is that correct?

A. Yes.

Q. How many times were you there?

A. Only about twice.

Q. Did you at any time have anything to drink at Randall's house?

A. Yes, but it was on my own accord. If we didn't want to take it, we didn't have to.

Q. All right. Now, what did you have to drink at Randall's house?

A. I had beer and whiskey.

Q. How many times?

A. Whiskey, two or three times; and beer, about two times.

Q. And who gave it to you, if anybody?

A. Well, Homer poured it out, and he asked us if we wanted it, and we said, "Sure," so we drank it.

Q. Now, did he pour out all the beer and all the whiskey that you had to drink at any time that you were at Randall's?

A. No. Not all the time.

Q. Who else besides Smickley poured out the beer and/or the whiskey for you when you were at Randall's?

A. Well, I think Sofie poured out some of it.

Q. How about Randall?

A. Well, he might have done it too.

THE COURT: Well, did he or didn't he?

THE WITNESS: Yes, I think he did.

Q. Isn't it a fact that you have been at Randall's house within the last six weeks?

MR. JIROLANIO: Objected to, if your Honor please, as being incompetent, irrelevant, and immaterial.

A. No. We weren't out there at their house.

THE COURT: The objection is overruled. (Exception noted for Defendants.)

A. Since August the 19th.

Q. That's the last time you were there?

A. Um hum.

Q. How was Randall dressed when you were at his house?

A. Well, he had his pajamas on.

Q. Did he have the uppers on, as well as the lowers?

A. No.

Q. What did he have up on top?

A. Nothing.

Q. Nothing?

A. No.

Q. Now, he did have the lowers on: Is that right?

A. Yes.

Q. Did you notice any tears or anything in the lower part of his pajamas?

A. No.

Q. Did he have them buttoned up?

A. Yes.

Q. Did you at any time see his private parts?

A. No.

Q. You never did?

A. No.

MR. PALMER: That's all.

Cross-Examination

BY MR. JIROLANIO:

Q. Your first name is Esther?

A. Yes.

Q. Esther, do you know Mr. Onuschak? Do you know this gentleman here (indicating)?

A. Yes.

Q. Did you ever see him before?

A. Yes.

Q. Now, did he ever ask you any questions?

A. Yes.

Q. Did he tell ever tell you what he wanted you to put down in the statement?

A. No. He didn't tell me what I wanted to.

Q. You said before you agreed—you agreed. What did you mean, Esther?

A. Well, I agreed that, to write, to—write fast for him.

Q. You agreed to write fast?

A. Yes.

Q. And were you getting those words that you put down in the writing out of your own mind, or did someone suggest them to you?

A. I got them mixed up. I got the words mixed up. That's why that was down there.

Q. Miss, I want to ask you just one more question. I ask you to look at this paper that's marked Exhibit No. 3.

A. Yes.

Q. At the writing here, and ask you whether or not that is in your handwriting.

A. You mean just this up here?

Q. Yes.

A. Yes, I think that's in my handwriting.

Q. Is that your handwriting?

A. Yes, that is.

Q. Is this the same as that?

A. No, I guess it ain't—it isn't.

Q. Then this is not your handwriting, the body of this Exhibit 3?

A. No, now I remember. I don't make A's like that, and S's I don't make like that.

Q. All right.

A. And the J's I don't make like that.

Q. All right. That's all.

Redirect Examination

BY MR. PALMER:

Q. Well, now, this is in Mr. Onuschak's handwriting, isn't it? He was the one who wrote this out?

A. Yes, well, it could be.

Q. Well, it was. It was, wasn't it?

A. Yes.

Q. And you signed it?

A. Yes, that's right. Yes.

Q. And your explanation, as I understood it, of why you said here that you had been at the Randall home at least ten times, when you had only been there twice, was because—what: You were in a hurry? Is that what you said?

A. Yes.

Q. They hurried you up. Well, how could you be in a hurry if you didn't even write it?

A. Well, I guess I got that mixed up with the other time, when I had to write.

Q. I see. That's all.

MR. JIROLANIO: That's all.

JACK MARSH, called as a witness on behalf of the Commonwealth and sworn.

Direct Examination

BY MR. PALMER:

Q. What's your name?

A. Jack Marsh.

MR. PALMER: Sir, I'd like you to know that this witness is deaf.

MR. JIROLANIO: Get a little closer, Mr. Palmer.

Q. And where do you live, Jack?

A. Wind Gap.

Q. And how old are you?

A. Eighteen.

Q. When is your birthday?

A. January the first.

Q. So last summer, last fall, you were seventeen: Is that right?

A. Yes, sir.

Q. Do you know Robert Randall?

A. Yes.

Q. Do you know Sofie Wofsie?

A. Why, I met her.

Q. Where did you meet her?

A. In Randall's home.

Q. And how many times were you in Randall's home?

A. Twice.

Q. And when? Do you remember what month?

A. I think it was October, I believe.

Q. You think it was in October. Could it have been earlier or later than that?

A. I don't know.

Q. Now, what did you do the two times you were there?

A. Well, I took the girls up to the, with the cigarettes. I was waiting outside—well, not outside—on the porch.

Q. Did you go in the house?

A. Yes, I was in the porch, yes.

Q. Well, in the house? Did you go in the house?

A. Well, that's connected right onto the porch, yes.

Q. Was Randall there?

A. No, he wasn't.

Q. Was he there either time you were in the house?

A. Yes. I mean he was upstairs.

Q. Did you go upstairs?

A. No.

Q. Did you drink anything when you were in this house?

A. Yes, the last time I was there.

Q. And what did you drink?

A. Beer.

Q. And where did you get the beer? Where did you get it, who gave you the beer?

A. Randall.

Q. Did he give it to you?

A. Yes.

Q. What was it: Bottled beer or in a can?

A. It was in a bottle.

Q. And how much did you drink?

A. One glass.

Q. Who poured it in the glass?

A. Randall.

Q. Did you see Sofie Wofsie at all when you were there in Randall's house?

A. Yes, in the kitchen.

Q. She was in the kitchen? Is that right?

A. Yes.

Q. What was she doing in the kitchen?

A. I guess washing the dishes.

Q. How was she dressed?

A. Well, she had a skirt on and a—a blouse.

Q. And how was Randall dressed when you were there?

A. You mean the second time?

Q. Yes.
A. Well, he had overalls and a T-shirt.
Q. How about the first time?
A. Why, I didn't see him the first time.
Q. Didn't see him the first time. O.K.

MR. PALMER: Cross-examine.

Cross-Examination

BY MR. JIROLANIO:

Q. This time when you saw him with the overalls and the T-shirt, is that the same day that you saw Sofie Wofsie?
A. No.
Q. Is that another date?
A. Yes.
Q. All right. That's all.

MR. PALMER: All right. You may step down.

EMMA WENTZEL, called as a witness on behalf of the Commonwealth and sworn.

Direct Examination

BY MR. PALMER:

Q. What's your name?
A. Emma Mae Wentzel.
Q. And where do you live, Emma?
A. R. D. 1, Wind Gap.
Q. And how old are you?
A. Fifteen.

Q. When's your birthday?

A. May 24th.

Q. Do you know Robert Randall?

A. Yes, sir.

Q. How long have you known him?

A. About five years.

Q. Do you know Sofie Wofsie?

A. Yes, sir.

Q. How long have you known her?

A. I met her once.

Q. Where did you meet her?

A. Up at Randall's place.

Q. And by his "Place" you mean his house?

A. His home, yes.

Q. His home. You have been to Randall's home, have you?

A. Yes, sir.

Q. How many times?

A. I have gone there several times.

Q. Well, by "Several"—how many times, if you remember?

A. Yes, quite a lot.

Q. Well, I mean once or twice or ten times or twenty times—how many times, if you recall?

A. I don't remember exactly.

Q. More than once?

A. Yes, sir.

Q. When is the last time you were at his house?

A. I don't remember any date.

Q. Well, have you been in his house since Christmas?

A. No.

Q. Were you in his house during the winter-time, say in November?

A. No.

Q. Were you in his house last summer?

A. Yes.

Q. Were you in his house in September, after school started?

A. I don't remember exactly what month.

Q. Do you go to school?

A. No.

Q. When did you quit?

A. I don't remember what month it was.

Q. Well, did you quit this year?

A. Yes.

Q. Since Christmas?

A. No. Before that.

Q. Before Christmas. And what are you doing now? Do you have a job?

A. No. I do the housework at home.

Q. You live with whom?

A. My parents.

Q. Now, you say you saw Sofie Wofsie once, is that correct, at the Randall home?

A. Yes, sir.

Q. Now, what time of day was it that you went to the Randall home the day you saw Sofie Wofsie?

A. After twelve, about.

Q. Twelve noon?

A. Yes, sir.

Q. And whom did you go with?

A. My girlfriend.

Q. Who is that?

A. Geraldine Tomsic and Esther Frabie.

Q. And you went together: Is that right?

A. Yes, sir.

Q. Now, when you got there, what did you do? As soon as you got to the door of his place, what happened?

A. Well, the first time we went there—

Q. I am talking about the time you saw Sofie Wofsie, that time.

A. Oh.

Q. Tell us what happened.

A. That day.

Q. Yes.

A. I was at home doing the housework, and Geraldine Tomsic came down to my house, and she told me to go along up to Randall's, that he wanted to introduce us to his girl. And we went up to his home.

Q. All right. Now, you got to the door, and what happened?

A. Randall told us to come in.

Q. Where was Randall?

A. At the door.

Q. Where was the door?

A. At the front of the house?

Q. All right. What did you do: Knock on the door? How did he know you were there?

A. Well, Geraldine knocked on the door, and he came to the door, and he said, "Hello," and he told us to come in.

Q. All right.

A. And we went in.

Q. Then what happened?

A. We went up, upstairs, all of us girls.

Q. Why did you go upstairs?

A. Sofie was lying down at the time.

Q. Well, I know, but why did you go up? Were you asked to go up?

A. He wanted to introduce us to his girl.

Q. Well, what did he say?

A. When?

Q. How did you know he wanted to introduce you to his girl?

A. Geraldine told me.

Q. All right. Did Randall say that he wanted to introduce you to his girl?

A. He says, "Come along, I'll introduce you to my girl."

Q. And did you go?

A. Well, yes.

Q. You went—where, upstairs?

A. Yes.

Q. All right. You came to a door upstairs. Was the door open or shut?

A. It was open.

Q. And what did you see?

A. Sofie?

Q. What was she doing?

A. She was sitting there on the chair at the time.

Q. Sitting on a chair?

A. Yes.

Q. What did she have on?

A. She had pajamas on.

Q. What did you say to her?

A. Well, Randall introduced us to her. We said, "Hello."

Q. Then what did you do?

A. We went downstairs.

Q. And did Sofie come down with you?

A. Yes. We all went down.

Q. What did you do when you got downstairs?

A. Oh, we just sat down, were talking for a while.

Q. Well, did you have anything to drink?

A. Yes, sir.

Q. What did you have to drink?

A. I had some beer.

Q. Who gave you the beer?

A. Well, it was there. We just took it.

THE COURT: "Who gave you the beer?" is the question.

THE WITNESS: No one.

Q. Where was the beer when you took it?

A. As I remember, I think it was on the table in the kitchen.

Q. How was Randall dressed?

A. He had overalls on.

Q. Now, isn't it—you say he had overalls on?

A. As I can remember, yes.

Q. Would it be anything else that he had on other than overalls?

MR. JIROLANIO: If your Honor please, I object to that question. She's answered "He had overalls."

THE COURT: The objection is overruled.

(Exception noted for Defendants.)

A. He just had overalls on.

Q. Were the overalls that he had on torn, or were they open at the flies?

A. No, sir.

Q. Did you hear any conversation between Randall and Esther?

A. In what way?

Q. Well, did you hear Randall say anything to Esther, anything, say, about—well, did you hear anything? Did you hear him say anything?

A. No.

Q. You know Mr. Kinney, do you not?

A. Yes.

Q. You have had conversations with him about this case?

A. Yes, sir.

Q. Now, on the other occasions when you went to the Randall house, other than the time you saw Sofie, did you observe Randall's dress? How was he dressed on the other times when you went there?

A. I think we went there twice. One time he was dressed in overalls, and the next time he was dressed just like any other man would dress.

Q. Did you ever see him in his pajamas?

A. No, sir.

Q. Did you ever see Sofie Wofsie when she was nude?

A. No, sir.

MR. PALMER (At side bar): Sir—

MR. JIROLANIO: If your Honor pleases, I'm going to object to that question and move

that the answer be stricken and the Jury be directed to disregard it.

THE COURT: The motion is denied.

MR. JIROLANIO: As prejudicial.

THE COURT: The motion is denied.

(Exception noted for Defendants.)

MR. PALMER: Sir, I plead surprise on two statements that this witness has made: One, that statement she made that she said she never saw Sofie Wofsie nude and the other statement, that she never saw Randall when he had pajamas on that were open in the front. With respect to the first statement, I have here a statement in her own handwriting, in which she says that when she went there, she went up to the room where Sofie Wofsie was and that Sofie Wofsie was then nude, that she saw her in the nude. So far as the second statement is concerned, with respect to the pajama bottoms open in the front, she stated to Mr. Kinney, the Juvenile Officer of this Court, when he discussed this case with her prior to this trial, that she saw him in pajamas open at the front with his private parts exposed. I ask leave to plead surprise and to have the right to cross-examine this witness.

MR. JIROLANIO: If your Honor please, I would like to object to all of this matter. You are trying to get in here indirectly what you can't do directly, first of all.

THE COURT: Mr. Jirolanio, these are statements made to Prosecutors and public officials, in her own handwriting. They may be used on a plea of surprise to contradict and for that purpose only.

MR. PALMER: Yes, sir.

THE COURT: No question about that.

MR. JIROLANIO: He also made a statement that she told Mr. Kinney certain statements.

MR. PALMER: Orally, sir, so far as the Kinney—

MR. JIROLANIO: That is definitely hearsay. You certainly can't go into that.

MR. PALMER: I have one of the cases here which I think allows us to. We might just as well get this straightened out.

THE COURT: Well, suppose we straighten it out till morning.

MR. PALMER: How about this one? Can I pursue this one?

THE COURT: You can pursue that, if you wish.

MR. PALMER: And then the other we can look at.

THE COURT: The Grand Jury is waiting.

MR. PALMER: I would like, if I may, just to finish this, only so far as the—because I

am a little afraid of these witnesses, when they go home.

THE COURT: Well, then, finish with it.

Q. Now, I hand you a paper marked Commonwealth's Exhibit No. 4, and I ask you to look at it and see if you can recognize that paper. Have you seen that paper before?

A. Yes, sir.

Q. Did you write it?

A. Yes, sir.

Q. Is that in your handwriting?

A. Yes.

Q. When did you write it?

A. When I went down to Bethlehem State Police barracks.

Q. And when was that?

A. I don't remember, but I was still going to school.

Q. Yes. Was that this summer, this last summer?

A. No, I don't think it was in the summertime.

Q. Was it written after the occasion when you saw Sofie Wofsie at Randall's house?

MR. JIROLANIO: I object to the question as being leading.

THE COURT: The objection is overruled.

(Exception noted for Defendants.)

A. What was the question, again?

Q. Was it written after the—

THE COURT: The witness is on cross-examination. Leading questions are permitted.

Q. Was that statement made after the time you saw Sofie Wofsie at Randall's house?

A. Yes.

Q. It was. Now, I'll ask you to read through the statement to yourself. Just read it to yourself. (Witness looks at exhibit.) Now, I will ask you ain, you having had an opportunity to read that statement, whether or not you ever saw Sofie Wofsie nude. Did you or did you not?

A. (Pause.) No, sir.

Q. You did not?

MR. JIROLANIO: She said, "No, sir."

THE COURT: Did you see her nude?

THE WITNESS: Well, that's what I have on the paper.

THE COURT: Yes. Well, did you see her nude?

THE WITNESS: (Pause.) No.

Q. Why did you put in the paper that you saw her nude?

MR. JIROLANIO: I object to that question, if your Honor please, as calling for a mental operation on the part of the witness.

THE COURT: The objection is overruled.

(Exception noted for Defendants.)

A. Well, some of the girls said she was nude, so I just—

Q. What girls?

A. Well, Geraldine said she was nude.

Q. Now, in this statement you have: "His girl Sandra was nude on the bed. She slipped panties and pajama—"

MR. JIROLANIO: Your Honor, I object to the District Attorney reading.

THE COURT: The objection is overruled. He may read from the statement.

(Exception noted for Defendants.)

Q. "She slipped panties and pajama tops on, and he introduced her to us." Did you see her put pajama tops and panties on?

A. No.

Q. Now, I ask you to read through this statement, again, please. Now, is there anything else in that statement that is not true?

MR. JIROLANIO: I object to that, if your Honor please, the form of the question.

THE COURT: The objection is overruled.

(Exception noted for Defendants.)

A. Not that I know of.

Q. Is all the rest of it true?

A. Yes.

Q. It's all true?

A. Yes.

Q. Now, do you know anything about a conversation he had with Esther involving a $5 bill?

A. Well, when we were ready to leave, he said

in a joking way, he asked her, if she'd give him a kiss, he'd give her $5.

Q. It was in a joking way?

A. Yes.

Q. Did you have any whiskey at this place, at Randall's?

A. I had about a shot or two.

Q. A shot or two. Who gave it to you?

A. (No answer.)

THE COURT: Who gave it to you?

THE WITNESS: No one.

Q. Where did you get it?

A. It was on the table.

Q. Now, you have said, I believe, that the beer was on the table and that no one gave you the beer: Is that right?

A. Yes.

Q. Now, isn't it a fact that Randall gave you the beer?

A. No, sir.

(Mr. Palmer produces paper, which is marked Commonwealth's Exhibit No. 5 for the purpose of identification.)

At this point court adjourns to Wednesday morning, February 15, 1956.

Pursuant to adjournment court convenes Wednesday morning, February 15, 1956.

MR. PALMER (at side bar): Sir, this witness has testified in direct examination that

Randall did not serve her any liquor or any beer, that the liquor and the beer was on the kitchen table, that she just helped herself, according to my recollection of the testimony. I have here, sir, a written statement, dated October 18, 1955, signed by this witness, wherein she stated Randall gave Richard a can of beer, "Randall also gave Geraldine and me a can of beer. We all had a shot of Seagram's 7." I plead surprise and ask leave to cross-examine on the basis of the statement that she has made, that Randall did not give her any beer, that she helped herself to the beer.

MR. FISHBONE: I am going to object to the plea of surprise on the part of the District Attorney on the ground that the Commonwealth has not been prejudiced by the testimony of this girl. One of the counts in the indictment is that he unlawfully permitted this girl to consume beverages on his property, and that has been substantiated by the girl's testimony.

THE COURT: It is a mere charge of furnishing, as I understand the indictment.

MR. FISHBONE: As I understand the law, I don't think the Commonwealth is prejudiced.

(Off-the-record discussion.)

THE COURT: The objection is overruled.

MR. FISHBONE: Exception, please.

(Exception noted for Defendants.)

Q. Now, Emma, as I understood your testimony yesterday—and please correct me if I am wrong—you testified that Randall did not serve you beer or liquor but that the liquor and beer was on the kitchen table and you helped yourself: Is that correct?

A. Yes, sir.

Q. Did Randall offer you beer?

A. No. It was on the table.

Q. I hand you a document marked Commonwealth's Exhibit No. 5 and ask you to read it, to yourself. (Witness looks at exhibit.) Have you ever seen this before?

A. Yes. Mr. Cavanaugh wrote that.

Q. And was it Mr. Cavanaugh, or was it Mr. Onuschak?

A. I think it was Mr. Cavanaugh.

Q. And is that your signature at the bottom of it?

A. Yes, that is.

Q. And did you tell him what to put in it?

A. He was asking the questions.

Q. Did you answer the questions?

A. Most of it was his idea.

Q. Well, now, by that what do you mean, "Most of it was his idea"?

A. Well, when I tried to tell him the story, he just said I was lying and things like that.

Q. Now, will you point to the man here who took the statement from you?

A. That's Mr. Cavanaugh (indicating).

Q. That's Mr. Cavanaugh: Is that right?

A. Yes, sir.

Q. Have you ever seen this gentleman before (indicating)?

A. Yes, sir.

Q. Who is he?

A. He's on the Liquor Control Board.

Q. And is his name Onuschak, do you know?

A. I think so. I don't know.

Q. Wasn't it Mr. Onuschak who took this statement rather than Mr. Cavanaugh?

A. It could be. I don't remember.

Q. Well, did Mr. Onuschak tell you you were lying?

A. No. Mr.—I think Mr. Cavanaugh told me I wasn't telling the truth.

Q. And that was at the time this statement was prepared?

A. I don't exactly remember whether it was on that; I think it was on that day, or it could have been at Mr. Kinney's home too.

Q. Did you tell them the truth—did you tell Mr. Onuschak the truth?

A. I was telling what I knew, but they—they thought of different things.

Q. That were what: Untrue?

A. Well, like Sofie being nude and Mr. Randall in his pajamas, that was their idea. Who told them, I don't know.

Q. Now, how about whether or not Randall gave you the beer? Whose idea was that?

A. I don't know.

Q. Well, you signed this statement, did you not?

A. Well, he wrote it down. I just signed my name.

Q. Yes, but did he write down what you told him to write down?

A. He asked the questions. I was just in a hurry to get home.

Q. Did he ask you whether or not Randall gave you some beer?

A. He probably did.

Q. What was your answer, if you recall?

A. I don't remember.

Q. Well, now, in this statement, which is marked Commonwealth's Exhibit No. 5, over your signature there appears this statement: "Randall gave Richard a can of beer. Randall also gave Geraldine and me a can of beer." Now, did Randall give you and Geraldine a can of beer?

A. No, sir. I said it was on the table.

Q. And you told whoever took this statement that it was on the table: Is that correct?

A. I said it was on the table, but what he wrote down I don't know.

Q. And you don't know who wrote it?

A. I'm not sure. I don't remember, sir.

Q. You don't remember. That's all.

MR. PALMER: Cross-examine.

Cross-Examination

BY MR. FISHBONE:

Q. Is it possible, Emma, that you signed two statements? Do you remember?

A. It could be. I don't know.

Q. Did you see Mr. Cavanaugh alone at any time?

A. Down at the Bethlehem State Police barracks, but there was also a woman in the room.

Q. And is it possible that you signed this at that time?

A. Yes, I think I wrote that, in the Bethlehem State Police barracks.

(Last question refers to Commonwealth's Exhibit No. 4.)

Q. When you were asked to sign that statement at the barracks, did Mr. Cavanaugh say anything to you about when you could go home?

A. No, he didn't.

Q. Did he say anything to you about what would happen if you didn't sign it?

A. Well, I took it for granted—

THE COURT: Did he say anything? Listen to the question. Read the question to the witness.

(Stenographer reads last question.)

A. I don't remember.

Q. That's all.

A. S. ONUSCHAK called as a witness on behalf of the Commonwealth and sworn.

MR. FISHBONE: I ask for an offer of proof, please.

MR. PALMER: Sir, further in connection with my plea of surprise in connection with this

witness, I have confronted her with a statement marked Commonwealth's Exhibit No. 5, which she has now indicated was a statement prepared by Cavanaugh, Mr. Cavanaugh of the Pennsylvania State Police. The questions on cross-examination were based upon the assumption that Mr. Cavanaugh had made them and taken the statements in the Pennsylvania State Police barracks.

MR. FISHBONE: She identified the other statement as being that one.

MR. PALMER: I ask leave, sir, to have this witness, Mr. Onuschak, testify that this statement was taken by him from this girl, that he made no statement to her about whether she was lying or was telling the truth, that he wrote down what she said, that they were not taken at the Pennsylvania State Police barracks but were taken in the Juvenile Court.

MR. JIROLANIO: She said some statements were taken in Mr. Kinney's office.

THE COURT: You are not offering it?

MR. PALMER: I am not offering the statement. I am merely calling this witness to testify with respect to—

THE COURT: As to where the statement was taken?

MR. PALMER: Yes. And also that she lied.

THE COURT: Merely for the purpose of contradicting.

MR. JIROLANIO: Where the statement was taken.

MR. PALMER: And that he did not tell her that she was lying and that he—

MR. FISHBONE: She didn't say that.

MR. PALMER: I intend to call Cavanaugh later.

MR. JIROLANIO: All right.

MR. PALMER: I have to go one step at a time.

Direct Examination

BY MR. PALMER:

Q. What is your name?

A. Alexander S. Onuschak.

Q. And your occupation, sir?

A. Enforcement officer with the Pennsylvania Liquor Control Board.

Q. Sir, in connection with your official duties, did you investigate the present case?

A. Yes, sir.

Q. Sir, I hand you a document marked Commonwealth's Exhibit No. 5 and ask you to take a look at it. Did you take that statement?

A. Yes, sir, I did.

Q. Is it in your handwriting, except for the signature?

A. Yes, sir.

Q. Where did you get the information, sir, on which you prepared the statement?

A. I secured the information in this affidavit from one Emma Mae Wentzel.

Q. She is the girl who just preceded you to the stand: Is that correct?

A. Yes, sir.

Q. Did you or did you not, sir, tell her that she was lying or that she was not telling the truth?

MR. FISHBONE: I object to that, your Honor. She didn't testify that he did.

MR. PALMER: She said that the person who took the statement—

MR. FISHBONE: She said Mr. Cavanaugh.

THE COURT: I believe it was Cavanaugh, yes. I will sustain the objection. I think she said it was Cavanaugh that said that to her.

(Exception noted for the Commonwealth.)

Q. Where was that statement taken?

A. At the Juvenile Home here in Easton.

Q. Did you take any statement from her at the Pennsylvania State Police barracks?

A. No, sir.

MR. PALMER: Cross-examine.

MR. FISHBONE: No questions.

THOMAS CAVANAUGH called as a witness on behalf of the Commonwealth and sworn.

MR. JIROLANIO: I ask for an offer.

MR. PALMER: Sir, I propose to prove by this witness that he did not take the Common-

wealth Exhibit No. 5 from this girl, it was not taken at the Pennsylvania State Police barracks, and that he had no discussion with her about Commonwealth's Exhibit No. 5.

MR. JIROLANIO: O.K.

Direct Examination

BY MR. PALMER:

Q. Your name, sir?

A. Corporal Thomas .. Cavanaugh.

Q. Occupation?

A. State Policeman.

Q. Sir, I hand you a document marked Commonwealth's Exhibit No. 5. Will you examine it, please?

A. Yes, sir.

Q. Did you take that statement?

A. No, sir, I did not.

Q. Did you take that statement at the Pennsylvania State Police barracks?

A. I did not.

MR. PALMER: That's all. Cross-examine.

MR. JIROLANIO: No questions.

DONALD R. ROHN called as a witness on behalf of the Commonwealth and sworn.

Direct Examination

BY MR. PALMER:

Q. Your name is Donald R. Rohn: Is that correct?

A. Yes, sir.

Q. What's your occupation?

A. Chief of Police of Plainfield Township.

A. S. Onuschak—Direct

Q. Sir, you are the Prosecutor in the case of the Commonwealth of Pennsylvania versus Robert Randall, No. 44 November Sessions 1955, are you not?

A. Yes, sir.

Q. Did you sign the information on your own knowledge or upon information received?

A. On information received.

MR. PALMER: That's all.

MR. FISHBONE: No questions.

A. S. ONUSCHAK, having been sworn previously as a witness on behalf of the Commonwealth, recalled.

Direct Examination

BY MR. PALMER:

Q. You have already been sworn.

A. Yes, sir.

Q. Mr. Onuschak, you are the Prosecutor in No. 17 November Sessions, 1955, Commonwealth of Pennsylvania against Robert Charles Randall, on a charge of violation of the Pennsylvania Liquor Code, and on No. 17-b November Sessions, 1955, Commonwealth of Pennsylvania versus Sophie Wofsie, for a violation of the Pennsylvania Liquor Code: Is that right, sir?

A. Yes, sir.

Q. You are the official prosecutor?

A. Yes, sir.

Q. Did you bring these prosecutions of your own personal knowledge or upon information received?

A. Information received, sir.

Motion for Mistrial
Ruling

MR. PALMER: That's all. Mr. Smickley.

MR. FISHBONE: Before you call Mr. Smickley, I want to make some motions here. (At side bar): I want to move for the withdrawal of a Juror and the declaration of a mistrial on the ground that the testimony of Geraldine Tomsic Miller, Esther Frable, and Emma Wentzel was improperly permitted on cross-examination and the District Attorney was erroneously permitted to plead surprise. The testimony of each of these three girls was not prejudicial to the Commonwealth. There's a requirement that before the Commonwealth can plead surprise, the testimony must be prejudicial. It may not have been of as great weight as the Commonwealth wished it, but the testimony of these witnesses was incriminating on direct evidence, and they cannot be considered hostile witnesses. And we submit, therefore, that permitting them to be cross-examined was prejudicial to the Defendant.

THE COURT: The motion is denied.

(Exception noted for Defendants.)

MR. FISHBONE: Now, may I make another motion? I move that the testimony of those three witnesses be stricken on the same basis.

THE COURT: The motion is denied.

(Exception noted for Defendants.)

Offer of Proof
H. P. Smickley—Direct

HOMER P. SMICKLEY called as a witness on behalf of the Commonwealth and sworn.

MR. JIROLANIO: I ask for an offer.

MR. PALMER: Sir, I propose to prove by this witness that he was a co-indictee in this case, that he resided at the home of Randall, the Defendant, that he saw Randall give beer and/or liquor to Emma Wentzel, Geraldine Tomsic, and Charles Tomsic and Esther Frable, and that these juveniles were intoxicated as a result of the liquor that had been given them.

MR. JIROLANIO: O.K.

Direct Examination

BY MR. PALMER:

Q. Your name is Homer Smickley: Is that right, sir?

A. Yes.

Q. Where do you live, Mr. Smickley?

A. Right now?

Q. Well, no. Where was your home?

A. Wind Gap, R.D. 1.

Q. And you are now over in the Northampton County Prison: Is that correct, sir?

A. That's right.

Q. Why are you over in the Northampton County Prison?

A. On a parole violation.

Q. For a parole violation. And the violation was what, sir? What were you arrested for?

MR. JIROLANIO: If your Honor please, I object to this.

Q. Well, did you plead guilty in this court yesterday?

A. Yes, sir.

Q. To what?

A. To a liquor law violation.

Q. And that was in connection with this Randall case: Is that correct?

A. Yes.

Q. Where did you live in Wind Gap, with whom, in whose house?

A. I lived in an apartment, separate and distinct from Mr. Randall's, in the same building.

Q. The same building. Now, sir, I refer you to July of 1955 and ask you whether you had occasion at that time to go into the Randall home.

A. The date or the time I can't say.

Q. Did you go into the Randall home?

A. Yes, sir.

Q. When: Last summer?

A. Yes, sir.

Q. Now, what did you observe? Just tell us what you saw, what happened.

A. When I went in the Randall home, the girls were there.

Q. What girls, if you know?

A. Some—Emma Wentzel.

Q. Any others?

A. I really didn't know these girls. Some of their names was told me afterwards. The Frable girl—I forget her first name now.

THE COURT: I'm sorry, I can't hear you. I don't know whether the Jury can. Will you speak louder, please?

Q. Speak into the microphone.

A. Emma Wentzel was there, Esther Frable, Geraldine Tomsic, and Charles Tomsic, and I forget her name, Sandy—

Q. Oh, Wofsie?

A. Yes.

Q. Miss Wofsie, the Defendant. Was Randall there?

A. Yes.

Q. And where were they, where were these people?

A. Well, they were sitting there, around the table.

Q. Where, in what room?

A. In the kitchen.

Q. And what were they doing?

A. Right at that time they were having some beer.

Q. All of them, sir?

A. Well, yes. Everyone that was there.

Q. Now, did you—

THE COURT: Was Emma Heatter there, or whatever her first name was?

MR. PALMER: Hermina.

THE WITNESS: No. Not when I was there.

Q. Not while you were there?

H. P. Smickley—Cross

A. I never saw her, don't know the Heatter girl.

Q. Now, what, if anything, did you see Randall do with respect to the beer and these children?

A. As far as I can recall, he poured beer out.

Q. For whom?

A. Well, for—everyone that was there, as I could recall.

Q. Did you have any?

A. Yes, sir.

Q. Did you observe these children after they had drunk this beer?

A. Yes.

Q. And what, if anything, did you observe with respect to their condition?

A. Well, a couple of them didn't feel too good.

Q. What do you mean by—

A. Well, I think they had a little bit too much.

Q. Do you know which ones they were? Do you recall?

A. I belive ~~the~~—I believe Esther Frable, probably, from what I can recall, and Geraldine Tomsic.

MR. PALMER: That's all. Cross-examine.

Cross Examination

BY MR. JIROLANIO:

Q. Mr. Smickley, do I understand you correctly when you state that when you walked into the house, the girls were there and you believed that they were drinking some beer, or drinking some alcoholic beverages?

A. Yes.

Q. Now, prior to going into that house, had you gone out and purchased or got some beer somewhere?

A. Not prior to that, no.

Q. Now, you say that you saw these girls drinking, and you thought that they had a little too much?

A. Yes, sir.

Q. I believe you testified that you were charged with a violation of the Liquor Code. I think you testified that you were charged with violating the Pennsylvania Liquor Code and that you pled guilty to that, did you not, sir?

A. Yes, sir.

Q. You were also charged with corrupting the morals of minor children, were you not, sir?

A. That's right.

MR. PALMER: I object, sir, on the ground that it's outside the scope of direct and also irrelevant.

THE COURT: The objection is sustained.

(Counsel appear at side bar.)

THE COURT: I understand that charge was withdrawn, was it not?

MR. PALMER: Yes, sir.

MR. JIROLANIO: It was nolle prossed, wasn't it?

MR. PALMER: No, it was withdrawn.

MR. JIROLANIO: I'd like to ask the Court's permission to ask that question to show—

THE COURT: I have already ruled on that. That charge was withdrawn; it is not in the case.

MR. JIROLANIO: The reason I want to show it is to show that he was also charged by the same Prosecutors for having committed this same act and that that charge was withdrawn.

THE COURT: The charge has been withdrawn.

MR. FISHBONE: I think it's relevant, your Honor. I want it on the record, your Honor.

MR. JIROLANIO: Just so we have it. That's all.

(Exception noted for Defendants.)

MR. PALMER: You may step down, Mr. Smickley. (Witness leaves witness stand.) Sir, in view of the fact that the Commonwealth is now preparing to close its case, there is only one element, so far as we can see, that is not yet in the record, and that is the age of this Defendant.

MR. JIROLANIO: We agree that the Defendant is over 21.

MR. PALMER: All right. Do you want to agree on it? I was going to have him stand up and have the Jury see him.

MR. JIROLANIO: We agree to it.

MR. PALMER: Very well. The Commonwealth rests, your Honor.

Colloquy

MR. JIROLANIO: If your Honor please, in No. 17-b November Session 1955, Commonwealth of Pennsylvania versus Sofie Wofsie, violation of the Pennsylvania Liquor Code, wherein the indictment in question containing two counts and both counts reading as follows, "Did unlawfully sell, furnish, or give liquor or malt or brewed beverages to a minor, namely Geraldine Mary Tomsic," and the second count, "Did unlawfully permit liquor and/or malt or brewed beverages to be sold, furnished, and given to a minor, namely Geraldine Mary Tomsic," if your Honor pleases, as I understand, the Commonwealth is relying on the section of the Liquor Code occurring in Purdon's at page 466, which I believe reads as follows—

THE COURT: You need not read it.

MR. JIROLANIO: All right. If your Honor please, the Act in question there states that a person shall not sell, furnish, or give any liquor or malt or brewed beverages or to permit any liquor or malt or brewed beverage to be sold, furnished, or given to any minor person. Now, if your Honor please, there's no question in this case, there's absolutely no evidence that there was any selling.

THE COURT: It does not make any difference. The word "Furnished" covers it.

MR. JIROLANIO: Well, may I please—if your Honor please, I'd like to put this on the record. I'm not asking anything unreasonable.

I'd like to finish my statement to the Court. I don't think—

THE COURT: I say to you now that the "Furnish" does not mean sell or—

MR. JIROLANIO: "Furnish" means supply, if your Honor please, under the cases.

THE COURT: All right. Make your motion.

MR. JIROLANIO: That there is absolutely no evidence produced in this case that would show that Sofie Wofsie, the Defendant, had anything to do with the selling of the liquor to this minor or to any person.

THE COURT: No evidence of any sales by anybody in the case.

MR. JIROLANIO: I am just trying to eliminate those portions of the thing. Now, then, the next thing that remains is the question of furnishing. Under the indictment, if your Honor please, there is no definition in the Criminal Code—

THE COURT: What is your position?

MR. JIROLANIO: My position is, if your Honor pleases, that the word "Furnish," as defined, especially in some cases, one in particular is 48 U. S. 45—there the word "Furnish" means to supply. Now, certainly the Webster's dictionary in the definition also defines the word "Furnish" to supply, and I am certain, if your Honor please, there's no evidence here that she at any time supplied. The most that

she did, if your Honor please, was that she poured. Now, pouring and supplying are two different things.

THE COURT: State your motion on the record. If I want argument, I will ask for it.

(Off-the-record discussion.)

MR. JIROLANIO: I demur to the evidence, and I move for a directed verdict in favor of the Defendant Sofie Wofsie for the reason that the Commonwealth has not made out a case sufficient to go to the Jury, that there is no evidence that she did either sell or furnish or give liquor or malt or brewed beverages to a minor, namely Geraldine Mary Tomsic, on the 23rd day of September.

THE COURT: The demurrer is overruled. The motion is denied.

MR. JIROLANIO: Exception.

(Exception noted for Defendant.)

MR. FISHBONE: At the conclusion of the Commonwealth's case, I will renew my motion for the withdrawal of a juror, for the same reasons as given before.

THE COURT: The motion is denied.

(Exception noted for Defendant.)

MR. FISHBONE: And in No 44 November Sessions 1955, the case of Commonwealth versus Robert Randall, charging in the indictment acts corrupting or tending to corrupt the morals of certain named minor children, I demur

to the evidence and request the Court to direct a verdict in favor of the Defendant on the ground that no probative testimony has been introduced in this case indicating any acts on the part of the Defendant which would tend to corrupt the morals of minor children.

(Off-the-record discussion.)

THE COURT: The demurrer is overruled. The motion is denied.

(Exception noted for Defendant.)

(Recess)

(Mr. Jirolanio opens to Jury.)

ROBERT C. RANDALL, a Defendant, called as a witness in his own behalf and sworn.

Direct Examination

BY MR. JIROLANIO:

Q. What is your full name, sir?

A. Robert Charles Randall.

Q. And, Mr. Randall, how old are you?

A. 37.

Q. Are you a citizen of the United States of America?

A. I am.

Q. Are you married at the present time?

A. I am a widower.

Q. Where do you live now, and where did you live on or about the 19th day of August of 1955?

A. R. D. 1, Wind Gap.

Q. And you better explain to the Court and Jury just where that is.

A. Well, R. D. 1, Wind Gap, is in Plainfield Township. On approaching Wind Gap, left turn at the Woodley House is the landmark, and a quarter of a mile out that road, which formerly was the Lemley place.

Q. Now, Mr. Randall, do you live in the property which you own?

A. Beg your pardon?

Q. Do you live in a property which you own?

A. Yes, I do, sir.

Q. What does your property, your home consist of up there?

A. Well, it's ten acres, it has three houses on it, livable houses to be rented. I live in one. I have a huge barn.

Q. Do you rent any of the other houses?

A. Yes, they were rented. Mr. Smiskley rented one apartment, and one apartment was rented to Oscar Dorsey, of Easton here.

Q. Now, Mr. Randall, you saw the girls that took the stand there, sir?

A. Yes, sir.

Q. You know them, do you not, sir?

A. Yes, sir.

Q. Now, Mr. Randall, I am going to direct your attention to the night before the 19th of August; that would have been the 18th.

A. Yes, sir.

Q. Do you know Sofie Wofsie?

A. Yes, sir.

Q. And how long have you known her?

A. Well, I met her on the night of the 18th of August.

Q. Sir, where did you meet her?

A. I met her in Bethlehem, at the colored club.

Q. You mean the Colored Voters Association?

A. Voters Association, yes.

Q. Is that located close to Brodhead Street in the City of Bethlehem?

A. I think it is, sir.

Q. About a half a block from the post office, at Fourth and Brodhead?

A. Yes, sir.

Q. Were you given a ride back to your place in Wind Gap by anyone on the morning of the 19th day of August?

A. Yes, I was.

Q. By whom, sir?

A. Mrs. Wofsie drove me home on the morning of the 19th.

Q. Now, when she drove you home on the morning of the 19th, do you know what time it was when she arrived at your home in Wind Gap?

A. I imagine it was around two, two-thirty.

Q. What did she do when she drove you to your home?

A. Well, as usual, as people do, she drove into the yard, and I said, "Thank you very much," and she said, "Well, good night, Ran; I'll see you." I said "All right." And she left.

Q. And where did you go, sir?

A. I went in the house.

Q. Now, sometime after that did someone knock at your door?

A. Yes.

Q. Who, sir?

A. Mrs. Wofsie knocked at my door.

Q. Do you know what she wanted or what she asked?

A. Yes. I heard a knock on the door, and I went down, and I said, "Yes?" She says, "Ran," she says, "the flood, I can't get through the road, the water is running down the road, it's raining so hard. I don't know, I can't see visibility, and I am afraid to continue home. Do you have a place that I could stay tonight?" And with that I said, "Yes, I have three or four rooms. Take any one you like."

Q. Mr. Randall, as you were coming home from the City of Bethlehem and before you were left off at your home by Mrs. Wofsie, what was the weather at that particular time?

A. Well, it was raining.

Q. It was raining?

A. It was raining, on the 18th, that night.

Q. I am talking about the—

A. The night—

Q. —the time that she left you off at your house, was it raining then?

A. Yes. Oh, yes.

Q. Now, directing your attention to the morning of the 19th, I'd like to ask you whether or not you had some people working for you on the 19th.

A. Yes, I did.

Q. Who were they?

A. Weiss's Plumbing of Brodheadsville. They were putting in a bathroom for me.

Q. Are they here in this room today?

A. The plumbers are, yes, sir.

Q. Do you know what their names were?

A. Offhand I don't know their names.

Q. Now, do you know Smickley?

A. Yes, sir.

Q. How long have you known him, sir?

A. Well, I've seen Mr. Smickley on and off, around Wind Gap, for four years. I—

Q. How long do you know him?

A. Well, around four years.

Q. Now, on the morning of the 19th of August, did Smickley come into your house?

A. Yes, he did.

Q. Did he say anything about the weather, the condition of the roads?

A. Well, we talked about the hard rain and what he had heard about the flood, the water rising, and that sort of thing.

Q. Did he say whether or not he could go to work that morning?

A. Well, he did say that he wouldn't be going to work due to the fact of the weather being wet, of his type work.

Q. Now, Mr. Randall, directing your attention to sometime in the afternoon of August the 19th, I ask you whether or not you asked someone to go out and buy or get some beer or alcoholic beverages of any kind?

A. Yes, I did.

Q. And whom did you ask?

A. I asked Homer if he would.

Q. Now, do you know approximately what time that was when you asked him, sir?

A. Well, around two, two-thirty in the afternoon.

Q. Now, when you asked Homer to go out and purchase or get some alcoholic beverages, was anybody there?

A. Yes, sir. The two plumbers and Mrs. Wofsie was there.

Q. Were the girls whom you saw on the stand there at that time?

A. No, sir.

Q. Do you know whether or not Mr. Smickley went out to get those particular things that you asked him to get?

A. Yes, he said he would get them.

Q. Did he come back with some alcoholic beverages?

A. Yes, sir.

Q. Now, Mr. Randall, on this particular date, especially around the afternoon, after dinner, how were you dressed?

A. I was dressed in blue denims, the summer flimsy type denim, working pants, and a T-shirt.

Q. In the attire that you were in on that particular day, do you know whether any portion of your private body was exposed?

A. No, sir.

Q. Now, Mr. Randall, do you remember the girls who were on the witness stand coming into your premises?

A. Yes, sir.

Q. Will you tell the Court and Jury on what circumstances they came in on the day that the plumbers were there and Sofie Wofsie was there?

A. Well, in the afternoon of August the 19th Emma Wentzel, Geraldine Tomsic, Esther Frable came into my premises. Upon knowing these girls as I have for five years, I said—

Q. Who do you know for five years?

A. Emma Wentzel, Geraldine Tomsic, and Esther Frable. I knew who they were. Emma Wentzel, during the lifetime of my wife, lived at my house practically. And upon seeing her at the door, I said, "Come in." They came in. I said, "Oh, by the way, I have a friend I would like for you all to meet." I said, "She's upstairs." Upon that, I led them upstairs; I led the way upstairs. I knocked on the door in which, the room that Miss Wofsie was sleeping in.

Q. Was the door closed?

A. The door was closed.

Q. And in response to a knock which you made on that door, what happened?

A. I said, "Sandra?" She said, "Yes." I said, "I have some friends I would like for you to meet." She says, "O.K. Just a minute, Bob." And at that I turned and walked back downstairs and left them up there. And shortly all, the girls and she, they came downstairs in the kitchen.

Q. Didn't you go into the room with the girls?

A. No, I didn't.

Q. Did you at any time see Miss Wofsie naked?

A. No, I didn't.

Q. Nude?

A. No, sir.

Q. Now, then, when you went downstairs, did the girls and Mrs. Wofsie come down?

A. Yes, sir.

Q. Now, what was the next thing that was done, sir, if you can recall?

A. Well, before these girls came in, of course, this beer was on the table, the vodka and Seagram's 7 was sitting on the table, and which Homer had purchased. And after we got down, after I got back downstairs, well, Homer came in to the kitchen. And at that time Mrs. Wofsie and the girls was in the kitchen, so that made Homer, myself, and Miss Wofsie, and the girls, three girls, in the kitchen.

Q. Were the plumbers there?

A. At that moment, no.

Q. Go ahead.

A. I suggested to Homer that as the plumbers, one of the plumbers carried him out to get this beer, if he were to carry them over a glass; and he said, "All right." And—well, the beer was on the table there, and everybody just poured some himself.

Q. You don't deny that there was whiskey and beer at your home?

A. No, sir, I do not.

Q. And you don't deny that some of that beer and whiskey was taken and used, was drunk by the girls or the boy that was there? You don't deny that?

A. I don't deny that.

Q. Had you on previous occasions offered any

one of the girls or boys that came there a drink of beer?

A. No, sir.

Q. Now, while you were in the kitchen with this group of girls and boys, was any portion of your body exposed?

A. No, sir.

Q. Private part of your body?

A. No, sir.

Q. Did you at any time while the girls were in the premises or at any other time attempt to play around with the private body or the bodies of the girls that took the witness stand?

MR. PALMER: I object. Just a moment. I object, sir, on the ground that it's leading. This is direct examination of a Defendant in a criminal case. I object.

THE COURT: The objection is sustained.

(Exception noted for Defendants.)

Q. Did you at any time touch the private body of Geraldine?

MR. PALMER: I renew my objection, sir, on the same basis as I made it before.

MR. JIROLANIO: Your Honor, I can definitely ask it, I believe. I can definitely ask the Defendant the question whether or not he did that. I can ask him that yes or no.

THE COURT: The objection is overruled.

(Exception noted for the Commonwealth.)

MR. JIROLANIO: Would you be kind enough to read the question, sir?

THE STENOGRAPHER: "Did you at any time touch the private body of Geraldine?"

A. No, sir, I didn't.

Q. Did you at any time try to touch the private body of Emma?

A. No, sir.

Q. Did the plumbers come back into that room where the girls were at the time?

A. Yes, sir.

Q. And did they have something to drink when the girls were there too?

A. Yes, sir.

Q. Did you offer any of the girls that were there on the 19th in the afternoon, of August, 1955, any sums of money, either five, twenty-five, or fifty dollars, in return for a kiss?

A. No, sir.

MR. PALMER: I object to that, sir, on the ground that it's leading. I move that it be stricken.

THE COURT: The objection is overruled.

(Exception noted for the Commonwealth.)

Q. Did the girls or any one of the girls come back on the next day, that you know of, on the 20th?

A. No, sir.

Q. Did the girls or any of them come to your place on the 18th?

A. No, sir.

Q. Now, tell me this, Mr. Randall: Do you know whether or not you had the plumbers working at your place on the 18th?

A. Yes, sir, I did.

Q. Do you know whether or not you had the plumbers working at your place on the 20th?

THE COURT: Mr. Palmer, Mr. Jirolanio—

(Counsel appear at side bar.)

THE COURT: I have permitted leading questions on the specific matters where he is charged and the girls accused him of doing different things. That was the reason for overruling Mr. Palmer's objection. But you cannot continue with it.

MR. FISHBONE: This I think is the last question, your Honor.

MR. JIROLANIO: Mr. Palmer, I don't want to take advantage. I was going to ask this question: Do you know what days the plumbers worked?

MR. PALMER: Sure.

Q. Mr. Randall, do you know what dates in the month of August the plumbers which you stated before worked at your place?

A. They were there on the 18th, 19th, and the 20th of August.

MR. JIROLANIO: You may cross-examine, sir.

R. C. Randall—Cross

Cross-Examination

BY MR. PALMER:

Q. Where is Brodheadsville, if you know, Mr. Randall?

A. Brodheadsville is about—

THE COURT: Mr. Palmer and Mr. Jirolanio—

(Off-the-record discussion.)

At this point court recesses to Wednesday afternoon, February 15, 1956.

Pursuant to recess court convenes Wednesday afternoon, February 15, 1956.

MR. JIROLANIO: It is agreed to by Clinton B. Palmer, District Attorney of Northampton County, and Justin D. Jirolanio, attorney for the Defendants, that the 18th day of August of 1955 was a Thursday, that the 19th day of August was a Friday, and that the 20th day of August was a Saturday, and that floods did take place in the Commonwealth on the 19th.

Cross-Examination resumed

BY MR. PALMER:

Q. Now, Mr. Randall, you said you were a widower: Is that right?

A. Yes, I am, sir.

Q. When did your wife die?

A. April 21st of 1955.

Q. How long had you been married?

A. Nine years.

Q. How old was your wife on the date of her death?

A. I think it was fifty-one.

Q. Fifty-one or sixty-one?

A. Fifty-one.

Q. Could it have been sixty-one or sixty-two?

MR. JIROLANIO: If your Honor please, I object to that as being incompetent, irrelevant, and immaterial.

MR. PALMER: He said he's a widower.

MR. JIROLANIO: Well, supposing you are a widower, because your wife dies. It doesn't matter how old she was.

MR. PALMER: It's not outside the scope of the direct examination. He said he was a widower. I am trying to find out when he was widowed and how old his wife was at the date of the death. He has testified that he is thirty-seven years of age.

THE COURT: I think we have pursued that far enough. The objection is sustained.

(Exception noted for the Commonwealth.)

Q. Now, you say you own this property up in Wind Gap?

A. Yes, I do, sir.

Q. Did you buy the property, or did you inherit it?

MR. JIROLANIO: That's objected to, if your Honor please, as being incompetent, irrelevant, and immaterial.

THE COURT: The objection is overruled.

(Exception noted for Defendants.)

A. My wife and I bought the property.

Q. You bought it together?

A. Yes, sir, we did.

Q. Did you own it together in your joint names?

A. Yes, sir, we do—we did.

Q. All right. Do you own a car?

A Yes, sir, I do.

Q. Did you own a car in August and September of 1955?

A. Yes, sir.

MR. JIROLANIO: If your Honor please, I object to this line of questioning. I don't see the relevancy of it.

THE COURT: I do not know the purpose of it.

MR. PALMER: I have a purpose, sir, if I can develop it. Do you want me to make an offer?

THE COURT: Suppose you state it. It would appear to be irrelevant.

MR. PALMER (At side bar): Sir, his testimony is that he was picked up, apparently, by Sofie Wofsie, the night of August the 18th and she drove him home.

MR. JIROLANIO: That's O.K. O.K.

Q. Did you own a car in August and September?

A. Yes, sir, I did.

Q. What kind of car?

A. I have a Cadillac, '39.

Q. Well, now, you were in Bethlehem on the evening of August the 18th, according to your testimony: Is that correct?

A. The evening of the 18th and night, yes, sir.

Q. You were in Bethlehem?

A. Yes, sir.

Q. When did you get to Bethlehem that day?

A. Well, I got to Bethlehem that night, around —I guess around quarter to twelve.

Q. About midnight, you mean?

A. I got to Bethlehem, yes, at about a quarter to twelve that night.

Q. Where had you been between say supper time that night and quarter of twelve?

A. I had been here in Easton, over to the Democratic Club.

Q. And you went from here to Bethlehem: Is that right?

A. Yes, sir.

Q. How did you go from here to Bethlehem?

A. I went out Route 22.

Q. In your Cadillac?

A. Yes, sir.

Q. And you got to the Colored Voters Club: Is that right?

A. Yes, sir.

Q. You got there about quarter of twelve?

A. Yes, sir, around that neighborhood.

Q. Parked your car?

A. Yes, sir.

Q. And you went in the club: Is that right?

A. Yes, sir.

Q. Are you a member of the club?

A. Well, associated member.

Q. Associate member. Well, are you a member?

A. Not a paid-up member.

MR. JIROLANIO: If your Honor please, does that matter?

THE COURT: The objection is sustained.

(Exception noted for the Commonwealth.)

Q. All right. You went into the club, and you there met Sofie Wofsie: Is that correct?

A. Yes, sir.

Q. Had you ever seen her before?

A. No, I hadn't.

Q. And you walked into the club you say about quarter to twelve?

A. Yes, sir.

Q. And where was she when you came in?

A. Well, I didn't see Mrs. Wofsie when I first came in. I noticed Miss Wofsie a little later, with a couple, a man and woman; they were talking together at the bar.

Q. The three of them were together at the bar talking?

A. Yes.

Q. Now tell us what happened then with respect to Mrs. Wofsie. Did you talk to her, or what happened?

A. Yes. In the club people talk to one another, and we were talking, a friendly, just a—we just got to talking in a party.

Q. At the bar?

A. At the bar.

Q. You were alone, were you?

A. Yes.

Q. And how long did you talk to her?

A. Well, we talked in this group, I imagine about an hour, an hour and a half.

Q. And what time did you leave the club?

A. Well, I figure it was about one-thirty when we left—or something after one.

Q. And you went out of the club at about one-thirty: Is that right?

A. Something on that order.

Q. Who was with you when you went out of the club?

A. Well, when I came out of the club, Mrs. Wofsie came out.

Q. The two of you came out together?

A. Well, yes, she came out behind me.

Q. The two of you were together: Is that not right?

A. Yes.

Q. Were you still talking with her?

A. Yes.

Q. You got out of the club, and what happened?

A. Well, I got out of the club, and she said, "My car is over here," it's behind, you know, "is here"—which in the conversation in the club it had been agreed upon, by Mrs. Wofsie, that she would carry me home.

Q. Why?

A. Due to the fact that I explained to them that I had developed car trouble.

Q. Well, when did you get the car trouble?

A. Well, due to the fact of these showers, this hard rain of the night that I went down there, I had developed a miss in the car that was ac ing as though it would stall. I had carburetor trouble or something. I said, "It's late, and I am going back up in Wind Gap, which is a little distance, and I don't know whether this thing will make it or not" —just like that, in the conversation.

Q. When did you get the car trouble, when did you first notice it?

A. Well, due to the fact of the age of this car, it's been kicking up on and off all the time. This particular night I noticed it after it was wet and the rain.

Q. Had you noticed it before you got to the Democratic Club in Easton?

A. As I say, the car had been giving me trouble all along, and that was—

Q. Well, did you notice it on the way down to Easton from Pen Argyl that night?

A. I had noticed it for several weeks, that it had been kicking up at intervals.

Q. Was it any worse in its kicking up when you left the club that night over in Bethlehem than it was on the day before?

A. When I noticed that it kicked up worse than ever is when I was on my way to Bethlehem that night.

Q. And you told Mrs. Wofsie that, did you?

A. Yes, I did.

Q. What did she say?

A. She says, "All right," she says, "Bob, I'll run you home." She says, "I'm on my vacation, and I don't have to report to work in the morning. I can run you home." I said, "Thank you."

Q. So you got in her car: Is that right?

A. Yes, sir.

Q. Where did you leave your car?

A. I left it parked in front of the Bethlehem, the voters club there.

Q. This was what—a Friday night, wasn't it—was it a Friday night?

A. Yes.

MR. PALMER: We agreed on that.

MR. JIROLANIO: Yes, we have agreed it's Friday morning.

THE WITNESS: The 19th.

MR. PALMER: Thursday night and Friday morning.

MR. JIROLANIO: Thursday, Friday, Saturday.

MR. PALMER: All right.

Q. You left your car where?

A. Parked in front of the veterans club there.

Q. On the street?

A. Yes, on the street.

Q. Now, in the meantime what had happened to these other people who were in the club having this conversation with you?

A. They left.

Q. Before you did?

A. Yes, they did.

Q. And when they left, were you and Mrs. Wofsie alone in your conversation, or were you with others?

A. Well, with others at the bar.

Q. When did Mrs. Wofsie volunteer to drive you home? Was it in the club or after you got out of the club?

A. In the club. We discussed about the car giving me trouble, while she was with her friends, and she agreed then that she would carry me home.

Q. Now, was it raining hard when you came out of the club this night?

A. When we came out of the club, it wasn't raining hard, when we came out of the club.

Q. Yes.

A. To go to Wind Gap.

Q. So starting about one-thirty, you and she took off for Wind Gap in her car: Is that correct?

A. Yes, sir.

Q. And what time did you get there?

A. Well, it must have been around two-thirty, I imagine. It takes about an hour or forty-five minutes to go from Bethlehem to Wind Gap, or maybe a half an hour. I don't know.

Q. About what time did you get there?

A. Well, if it—we left around one-thirty, we got home probably two or two-fifteen.

Q. All right. Then you both went in the house, is that correct, as I understand your testimony?

A. No. She didn't go in the house that time.

Q. Oh, she didn't?

A. No, sir.

Q. Just dropped you off at the front door?

A. Well, we drove in the yard, and, as usual, said, "I'll see you. Thank you very much."

Q. She just dropped you off like that?

A. And I got off and went in the house.

Q. And how much later was it that she came back?

A. Oh, it must have been eight or ten minutes. It wasn't long. It wasn't very long before she came back after that.

Q. Now, after you left the club and you were driving up to Pen Argyl, how was the weather then?

A. Well, it was misting and rather foggy, mucky like, foggy—not to the effect at that time that vision was impaired. We could see. It wasn't raining too bad.

Q. How was it when she dropped you off at your house?

A. We noticed on the way home, as approaching Wind Gap, the rain begun to get harder. But nothing was mentioned about it—just said, "It's really pouring down," or something of that sort.

Q. And then she left, and came back: Is that right?

A. Yes. After I got out of the car.

Q. And as I understand your testimony, she said she came back because the weather was so bad she couldn't drive: Is that right?

A. Yes, she came back and said that the vision, she was—her vision was impaired due to the fact

of the rain and fog and what not, that she was afraid to attempt to continue her journey to Bethlehem that night.

Q. So that she spent the night at your house: Is that right?

A. She asked if I had a room.

Q. Well, she spent the night there, didn't she?

A. Yes.

Q. Was anybody else there besides the two of you?

A. No.

Q. She spent all the next day up there: Is that correct?

A. Yes. That afternoon, yes.

Q. Well, did she have her dinner there that night?

A. The night that she carried me home?

Q. No, the next night, the night of the 19th, which was a Friday, as I understand it.

A. Yes. She probably had a sandwich or something of the sort.

Q. How long did she stay that night?

A. Until around quarter to seven, I think it was, she left.

Q. Now, did it rain hard the next day? By "The next day" I mean Friday.

A. No, sir. The weather cleared up on Friday.

Q. It was a clear day all day, wasn't it?

A. Yes, sir.

Q. You picked up your car I guess later, didn't you?

A. Yes, sir.

Q. Did you go back down to Bethlehem with her the next day?

A. That night, yes. I went back down to Bethlehem.

Q. To get—with her?

A. Yes, to see about my car.

Q. And you drove it back? Is that not right?

A. Well, after I carried it over to the filling station next door there and they looked at it and dried off the spark plugs for me, and I came back.

Q. Now, these girls—by the girls I mean Tomsic, Frable, and the others—they were at your house more often than this one day of August the 19th, 1955, were they not?

A. Yes, sir. In fact, Prosecutor, I don't know of a child in the neighborhood that haven't been to my home on numerous occasions. I had a horse, and they all came over to ride and what not.

Q. Well, I am touched beyond words. Now will you answer my question? Is the answer to my question yes, they were there on other occasions?

A. On other occasions.

Q. Yes. Were they in your house on other occasions?

A. They have been in my house.

Q. You have said that you made beer and liquor available to them on this day, did you not?

A. On August the 19th.

Q. 19th. Is that correct?

A. August the 19th.

Q. Right. Any other day?

A. No.

Q. Did any one of those children on any other occasion, to your knowledge, have beer, liquor, vodka, or any alcoholic beverage in your house other than that day?

A. No, sir, they didn't.

Q. Now you have said, as I recall your testimony, that you sent Mr. Smickley for these alcoholic beverages after the children arrived—or before the children arrived?

A. No, sir. I suggested, I asked Homer if he would go out and get some beer before they arrived, for Mrs. Wofsie, Homer Smickley, and I; that's what it was, the purpose was for.

Q. How about the vodka? There has been testimony that you had vodka there that day. Did you have any vodka?

A. Homer brought the vodka back.

Q. When he came back?

A. Yes, sir.

Q. Who paid for this beer and vodka and whatever else was bought?

A. Homer paid for it.

Q. He did. Didn't you pay for it?

A. No, sir.

Q. Did you give Homer the money afterwards or before?

A. No, sir. I haven't given any money as yet.

Q. Now, did you say to these girls on this occasion that you wanted them to meet your girl? Is that what you said?

A. No. I said, "Come in. I want you to meet a friend of mine."

Q. You didn't use the word "My girl": Is that correct?

A. No. No, I didn't.

Q. Was the suggestion made, with respect to the vodka, that that was a toast to your coming marriage with Sofie Wofsie?

A. No, sir.

Q. That's not true?

A. No, sir.

Q. Now, you have said, as I recall your testimony, that you had a pair of denims on on this day: Is that correct?

A. Yes, sir.

Q. Were they torn?

A. No, sir.

Q. Did Sofie Wofsie tell you to cover up when the children were around on this day?

A. No, sir. Mrs.—

Q. Go ahead.

A. Mrs. Wofsie say to me, to get those kids out of the house. That's what she said.

Q. Did she say why?

A. She just said it wasn't nice, wasn't that they have—kids hanging around. I said. "Well, these are neighbors kid. They are all right. They are nice children. They just came over here; they came over here today as they have done previously."

Q. Well, she saw them drinking, didn't she?

A. Well, she said that before the drinking took place.

Q. Did she say anything about getting the children out after she saw them drinking?

A. Well, she suggested to me that they should go home.

Q. Was that after the children started to drink?

A. Before.

Q. Well, what did she say, if anything, with respect to the children being there after they started to drink?

A. She didn't say anything.

Q. You were drinking that day when the children were there, were you not?

A. Yes, sir.

Q. What were you drinking?

A. I drank beer.

Q. Did you feel nauseated that day because of the amount of drinking you were doing?

A. No, sir.

Q. You did not.

A. No, sir.

Q. Did you tell Sofie Wofsie that you felt nauseated because of the drinking you had been doing?

A. I told her that I was tired.

Q. But you didn't say anything about being nauseated?

A. No.

Q. Did you observe anything with respect to these children that were there? Were any of them not feeling so good, as I think Mr. Smickley indicated?

A. No, sir. I didn't see any indication that no one had any enormous amount of anything to make him feel any way like that.

Q. Now, these plumbers came from Brodheadsville: Is that right?

A. Well, Mr. Weiss's office is in Brodheadsville.

Q. Oh, I see. Well, where did the plumbers come from?

A. I think they come from Kunkletown.

Q. Where is Kunkletown?

A. It's over in the vicinity of Brodheadsville. It's above Wind Gap.

Q. Monroe County or Northampton County?

A. I think it's in Monroe County.

Q. And did they stay at your place overnight these nights, or did they come down each day?

A. They came down each day.

Q. How did they come down: In a car?

A. They came down in the company's truck.

Q. And they were there, as I understand your testimony, on the 17th, 18th, and 19th?

A. No, they were there on the 18th, 19th, and 20th.

Q. I beg your pardon. Now, what were they doing at your place?

A. They were installing a bathroom for me. In fact they put, installed two baths for me.

Q. Where were the baths that they were installing with respect to your house?

A. The apartment that Homer rented from me, they installed a bath there.

Q. Now let's talk about the 19th, shall we?

A. Yes.

Q. Where were they working on the 19th?

A. On the 19th they were working on a house

next to mine, on the right. The houses are lined up in a row.

Q. Right.

A. And as you come into the yard, the first little house, I added a bathroom onto this house.

Q. And that's about how far, about 30 feet away from your house?

A. Something in that neighborhood.

Q. And they were working over there, installing —there were two of them, were there not?

A. Yes, sir.

Q. And were you paying for this work to be done?

A. Yes, sir.

Q. How much were you paying, if you recall?

A. Well, I think the whole job, with the two bathrooms, cost around $1500.

Q. Yes, and you were paying them by the hour, were you not?

A. Well, no. See, the job was given by contract. The plumbing company said, "Well, we'll install this bath for so much." And—

Q. I see. And these two plumbers, they were there on the 19th working: Is that correct?

A. Yes, sir.

Q. And were they over in your other house not working, during how much of that day?

A. Well, I—they, I think they were quitting around four o'clock, and they came over, probably five or ten minutes before, while working hours was going on.

Q. They came over about quarter of five?

A. No, about four o'clock they came over.

Q. Well, what time did these children leave?

A. Around four-thirty.

Q. What time had they gotten there?

A. It was around quarter to four, I guess.

Q. Well, now, is my understanding of your testimony—and I want you to correct me if I am wrong—that the only day these children were in your house and had liquor or beer or wine, that you know of, were present—

A. Yes, sir.

Q. —was this day of August the 19th, 1955: Is that correct?

A. Yes, sir.

Q. And that they were only there between approximately the hours of—

A. Quarter of four until four-thirty.

Q. —quarter of four to four thirty?

A. Yes, sir.

Q. That's all.

A. Yes, sir.

— Redirect Examination

BY MR. JIROLANIO:

Q. Only one question, Mr. Randall, when Homer Smickley went out to get some beer, did you say anything to him about helping to pay for it?

A. Yes. We had talked, Homer and I, about getting some beer, and it had been agreed upon that I would go half of the expenses.

Q. But you haven't paid him anything?

A. Not as yet.

Q. That's all.

MR. PALMER: That's all.

BY THE COURT:

Q. That was half on the beer, I understood you.

A. Yes, sir.

Q. He brought vodka back too.

A. Well, he brought—Judge, your Honor, he brought back Seagram's 7 and the vodka.

Q. Who paid for that?

A. He did. He bought it, and he paid for it.

MR. JIROLANIO: That's all.

ELMER FRANTZ, called as a witness on behalf of the Defendants and sworn.

Direct Examination

BY MR. JIROLANIO:

Q. What is your name, sir?

A. Elmer Frantz.

Q. Elmer, how old are you?

A. Twenty-seven.

Q. Are you married, sir?

A. Yes, sir.

Q. Where do you live?

A. I live in Saylorsburg R. D. 1. It's right near Kunkletown.

Q. And where did you live on or about the month of August of 1965?

A. That's where I had lived at.

Q. What is your occupation, sir?

A. Plumber.

Q. And by whom have you been employed?

A. Emmett Weiss & Son.

Q. And were you so employed in the month of August?

A. Yes, sir.

Q. I direct your attention to the month of August of 1955—strike that. I ask you whether or not you know Mr. Randall.

A. Yes, sir, I do.

Q. How long have you known him, sir?

A. May I look on the time sheets? Then I can tell you. (Witness refers to paper.) Since May 25th.

Q. Since May 25th?

A. That's right.

Q. Of what year, sir?

A. '55.

Q. How did you get to know him?

A. By his first job that I done for him.

Q. You mean by "Job" that you did some plumbing work?

A. That's right.

Q. Now I ask you whether or not you did any plumbing work at the residence of Mr. Randall in August of 1955.

A. Yes, sir.

Q. Could you tell us when?

A. Yes. (Witness refers to paper.) On the 18th, 19th, and the 20th.

Q. What are you looking at, sir?

A. At the work sheets that we work on.

Q. Would you mind letting me look at the work sheets?

A. As you will notice, there were two jobs there, two different pages.

(Five papers produced by witness are marked Defendants' Exhibit "A" for the purpose of identification.)

Q. Mr. Frantz, I show you Defendants' Exhibit "A" and ask you what they are, sir.

A. These here?

Q. Yes.

A. They are the work sheets where we charge material and time.

Q. And by looking at those work sheets, were you able to ascertain what days you worked there in August: Is that correct?

A. That's right.

Q. And the dates that you gave were what? Will you give them to us again?

A. The 18th, 19th, and 20th.

Q. Now can you tell, by looking at those work sheets, how many hours you worked on the 18th?

A. Yes. I worked seven hours on the 18th.

Q. How about the 19th?

A. On the 19th I worked eight.

Q. And how about the 20th?

A. Four.

MR. JIROLANIO: Now, may I say to the witness that both the District Attorney and I have agreed that the 18th, 19th, and 20th of August respectively are Thursday, Friday, and Saturday?

THE WITNESS: That's right.

Q. So that you would have worked four hours on Saturday, eight hours on Friday, and approximately seven hours on Thursday?

A. Right. Due to rain we only worked seven hours on the 18th, because we had—the rest of our work that we wanted to do at that time, that we had the material to do, we had to do outside.

Q. Now, I'd like to direct your attention to the 19th of August and ask you whether or not you had occasion to see Randall that day.

A. On the 19th—I didn't see Mr. Randall until toward evening, sometime after four o'clock, he sent Smickley out—

THE COURT: On what day: The 19th?

THE WITNESS: On the 19th—to ask us in to have a drink. That was the first time I seen Randall during that entire day.

Q. Were you able to look at his wearing apparel?

MR. PALMER: I object, sir, on the ground of leading.

THE COURT: The objection is sustained.

(Exception noted for Defendants.)

Q. Can you tell me whether or not any portion of his body was exposed?

MR. PALMER: I object, sir, on the same ground. It's a leading question.

MR. JIROLANIO: He is being charged with that, if your Honor please.

THE COURT: Not this man.

MR. JIROLANIO: I'm sorry.

Q. Did you observe how he was dressed?

A. That there I can't remember, just how he was dressed.

Q. Was there anything unusual about his appearance to you that day?

MR. PALMER: Objection, sir.

A. No.

MR. PALMER: I object and ask that the answer be stricken from the record.

THE COURT: The objection is overruled.

(Exception noted for the Commonwealth.)

Q. Did you see Smickley that afternoon at any time?

A. Yes, sir.

Q. Can you tell the Court and Jury about what time and under what circumstances, sir?

A. I can't give you any definite times, I mean as far as one o'clock or two o'clock or anything like that is concerned, but it was sometime after dinner Mr. Smickley come out and said that Mr. Randall told him to ask me if I would run him up to Wind Gap, that he wanted to go to the liquor store.

Q. And what did you do?

A. Well, at first I asked him, "Can't you drive?" Then he said—I think he said his license were suspended or revoked, whatever had been the case. Well, then after a small discussion, with me and my helper, then I decided I would run him up, and I did.

Q. And did you run Smickley up—to where?

A. I run him up to the liquor store.

Q. What did he get?

A. That I do not know. He had it in a bag. What he had in the bag I do not know.

Q. Now, were you working on the premises of Mr. Randall in the morning on the day of the 19th?

A. Yes, sir.

Q. Did you see any girls around there any time?

A. Not until later in the afternoon.

Q. When did you first see the girls, under what circumstances, sir?

A. Like I say, it was late in the afternoon; what time exactly I couldn't tell you. As far as I remember, Smickley and I had come back from Wind Gap early, and it was some time after that that I first noticed them sitting out under a tree with some other colored fellow that had been staying there with Mr. Randall at the time.

Q. You saw the girls?

A. Sitting under the tree with them; and the reason I seen them, we went back and forth to the truck for fittings and tools, whatever we needed, and then we noticed them sitting.

Q. And what else did you do that afternoon?

A. You mean—

Q. Anything. Tell us anything that you did wherein these girls were involved.

A. Well, after Smickley and I come back from Wind Gap with the drinks, we had also stopped at the Woodley House for a case of beer.

Q. All right.

A. And after we come back, Mr. Smickley took his drinks inside, and I proceeded with the work, in the other building there, which we had been working in. And a few minutes after that he come out and brought us a can of beer and said, "Mr. Randall sent this out." Then we continued to work till sometime after four o'clock. Mr. Smickley come out again, and he says, "Mr. Randall wants you to come in and have a drink before you go home." And I said, "Bring it out, because we have some tools to load yet." And Friday nights I generally like to get out by four-thirty, if possible, on the jobs, because that's our shopping night. And I think he left again and went in and come back out then again and said Randall insisted that we come in for this here drink, he wanted to talk with me how the job was coming. So then we decided we'd go in and have a drink.

Q. Who is "We"?

A. My helper and I.

Q. Did you go inside to the house of Mr. Randall?

A. Yes, sir.

Q. What room, do you know?

A. The kitchen.

Q. Who did you see there? Who was in the kitchen at the time you got in there?

A. Well, Homer went along in with us, and Mr. Randall, and this lady here, and there were three girls and one boy in there.

Q. What did you see and what happened while you were there?

A. Well, I hadn't seen anything out of, out of ordinary, what I mean, nothing out of line. They gave us a drink. Who gave us the drink I don't remember, whether it was Sofie or Homer or Bob there. I couldn't say which one gave us the drink. But then we had, I think it was two beer, and Bob and I were talking there about the job. And then it was close to four-thirty, we went out and we loaded up our tools, started clearing away, so you could get in the house again—we had everything tore apart—and we left for home.

Q. Now, you also worked there on the 18th, didn't you, sir?

A. Yes, sir.

Q. Did you see any girls around there on the 18th?

A. No, sir. This was the only occasion that I ever worked, what I mean, the time that I worked there, that I seen any girls around there.

MR. JIROLANIO: You may cross-examine.

Cross-Examination

BY MR. PALMER:

Q. They were in the kitchen when you went in there, weren't they?

A. Yes, sir.

Q. And they were there when you left?

A. Yes, sir.

Q. Do you know how long they had been in there before you went in the kitchen?

A. No, I haven't any idea. I don't know when

they left from sitting out under the tree that they went into the house.

Q. About how long before you went in the house did you see them out sitting under the tree, if you recall?

A. I don't—

Q. You can't remember: Right?

A. No, I don't.

Q. It was after lunch?

A. Yes, it was quite some time after lunch, when Smickley come out and asked me to take him.

Q. You of course don't know how long the children remained there after you left?

A. No, that I couldn't say.

Q. Was there beer and liquor on the table when you were there?

A. Yes, sir.

Q. Did you see the children drinking it?

A. No, sir. I can't remember seeing them, although it could have been possible; but as far as my memory is concerned, or that I remember of, I haven't seen them drink.

Q. That's all.

SOFIE WOFSIE, one of the Defendants, called as a witness and sworn.

Direct Examination

BY MR. JIROLANIO:

Q. What is your name?

A. Sophia Wofsie.

Q. Where do you live?

A. 1446 Monocasy Street, Bethlehem.

Q. Are you married?

A. No, I'm not.

Q. Divorced?

A. Yes.

Q. Do you work?

A. Yes, I do.

Q. Where do you work?

A. Lynn Sportswear.

Q. Where?

A. In Bethlehem.

Q. Who are you employed by?

A. Mr. Reitars.

Q. What kind of work do you do?

A. Machine operator.

Q. I direct your attention to the 19th day of August, 1955.

A. Yes.

Q. In the afternoon, and ask you where you were then, right after dinner.

A. Right after dinner I was at Mr. Randall's home in Wind Gap.

Q. Would you tell the Court and Jury whatever transpired in the Randall home after dinner on the day of August 19, 1955?

A. Yes. During the afternoon—you mean concerning the children?

Q. Everything, anything that happened. Tell us concerning the children, anything that you want to tell us about the happenings that afternoon.

A. Sometime in the afternoon I heard voices; I was upstairs at the time.

Q. Where were you upstairs?

A. I was lying down.

Q. Where?

A. In the bedroom that I had been—had been given to me. So there was a knock on my door, and Mr. Randall said that he would like me to meet some friends of his, some neighbors. I said, "O.K." I opened the door, and this one girl came in. I forget her name; I think her name is Emma or—one of them. And she came in with me while I got dressed. I had—

Q. How were you dressed when this girl came in?

A. I had a slip on. So while she was in the room with me, I put a skirt and blouse on, and I came down with her and met the other girls. And I believe there were three girls and two boys. Prior to this—

Q. Now—

A. May I start from the beginning?

Q. No. We will do it my way, please.

A. What is it now?

Q. What happened then in the kitchen when the girls were there?

A. During that time I felt like having a beer. I helped myself. And I poured a few drinks for the other adults. There was glasses on the table, and I poured the drinks in the glasses.

Q. Whose?

A. I saw one girl, one of the kids take a drink, and I told Mr. Randall to chase the kids home, that he would get into trouble if he allowed them to drink. He says, "You must be seeing things, because they wouldn't do anything like that. They are neighbors." But evidently they—well—

Q. Now, this drink that you are talking about, where was it, the beers?

A. Well, the beer was in the refrigerator, and the whiskey was on the table, the vodka and I think it was Seagram's—or something—it was some sort of whiskey and vodka and beer.

Q. Did you buy that whiskey?

A. I did not.

Q. Did you buy the beer?

A. No.

Q. Did you buy the vodka?

A. No.

Q. Was this beer, whiskey, or vodka yours?

A. No.

Q. And you said that you poured some alcoholic drinks in glasses?

A. I first helped myself to a glass of beer; and since there were other adults around and—as a matter of fact, Mr. Smickley said he would like a drink, and I poured a glass for him. And there were other glasses on the table, and I poured liquor in a few glasses.

Q. The girls that you are talking about were the same girls that took the stand this morning?

A. Correct.

Q. Do you have any knowledge of how long they remained there while you were there?

A. I do not know—yes; pardon me. While I was in the kitchen, after I had a beer, I went upstairs again. I sort of tired of their chatter, and I went upstairs; and I locked the door. So about—oh, I suppose I was dozing about a half hour, I tried

to get some rest; since I knew I had to drive back shortly—there was another knock on the door. I had to unlock the door again, and the one girl said, "Well, now we are leaving. Will you say good-by to us?" I said, "Of course. I'll be down."

Q. Which was the girl, do you know?

A. I really don't know which one it was. It was one of the girls. I don't remember who it was. I saw her for just a few moments.

Q. While you were downstairs, was Mr. Randall there?

A. Yes, he was.

Q. Was Mr. Randall there when the girls were also there?

A. Yes, he was.

Q. Were you able to see Mr. Randall when he was in the kitchen at the same time when the girls were there?

A. Of course.

Q. Did you see anything improper going on there?

A. Certainly not.

MR. JIROLANIO: You may cross-examine.

Cross-Examination

BY MR. PALMER:

Q. Did you have a bathing suit with you?

A. Yes, I had.

Q. During that day. Did you have your bathing suit on when you were downstairs?

A. I had put my bathing suit on after breakfast. The sun had come out, but the roads were still im-

passable, so since I didn't have to go back, actually, I decided to take advantage of the sun. I didn't feel like driving myself. So I put my bathing suit on upstairs. I had tights on and a tailored shirt.

Q. And did the children at any time see you with that on, that outfit, or did they only see you with your slip and when you were dressed?

A. Evidently the one girl saw me with the shorts and the shirt on, and she presumed it was a shortie nightgown.

Q. Why do you say that, evidently she saw you?

A. But I had no shortie nightgown on.

Q. You had a slip on, didn't you, when they came upstairs the first time?

A. That's what I said before, yes.

Q. Well, is it right? Do you want to change it?

A. No. I had a slip on. Look, they came back and forth several times.

Q. Well, you have said—

A. And this happened in August. I don't have a terrific memory.

Q. Well—

A. I didn't write the things down.

Q. When they first came up, when they first came in the house, you had a slip on, as I understand your testimony: Is that correct?

A. Yes.

Q. And one of the girls came into the room?

A. As a matter of fact—pardon me.

Q. Surely.

A. The first time it was three girls, and then it seemed like another girl arrived and two boys. It

seemed like, it seemed to me two or three trips. So it wasn't like, that they came at one time.

Q. You mean they came upstairs at different times when you were there?

A. No.

Q. Well, let's start—

A. Only one time I was in my slip. I opened up the door, and she came in, and I said, "If you care to wait, I'll get dressed and go down with you."

Q. Right.

A. And she did.

Q. Right. And you put on, as I understand your testimony, a blouse and skirt?

A. Yes. Prior to that, if you are talking about the briefs—prior to that I had been sunning myself; I had put on my trunks and shirt, and I was outside, about an hour or so, and I went back upstairs. I put back my slip, that is, I put my slip back on, and I thought I would take a rest, which I did.

Q. Well, now, when you were sunbathing, the children weren't there, as I understand it?

A. No, they were not.

Q. And so that you had the slip on when they first arrived, and then you put your dress, put a skirt—

A. Correct.

Q. —and a blouse?

A. Yes.

Q. Then you went back upstairs for a half an hour to lie down: Is that correct?

A. Yes.

Q. And did you take off any of your clothes to lie down?

A. Yes, I put back the swimming trunks?

Q. Put back your swimming trunks?

A. I put the swimming trunks back on to be more comfortable, and also the shirt.

Q. And then, as I understand it, the children came up?

A. After all, it was a hot day.

Q. Then the children came back upstairs, or some of them did: Is that correct?

A. One happened to come upstairs and said that they were leaving and would I come down to say good-by.

Q. And did you?

A. I said I would, yes.

Q. You did. And you came down in your swimming trunks: Is that correct?

A. Yes.

Q. What time did you go home that night?

A. Oh, let's see—I had a bite to eat there, about dinner, I had called the police station there about the conditions of the roads—

Q. What time—

A. They weren't too good.

Q. What time did you go home, Mrs. Wofsie? That was the question.

A. I don't remember the time exactly. It was during the evening, early part of the evening.

Q. What time would you say these children left?

A. Approximately four-thirty.

Q. You saw the children take something to drink, did you not?

A. I saw one girl take a sip of beer. That's when I told Mr. Randall to get rid of the children, that he would get into trouble.

Q. How many adults were there?

A. Oh, Mr. Randall, Mr. Smickley, myself, there was a colored cook, and the plumbers, the two plumbers.

Q. Where was this beer and the vodka?

A. As I said before, the liquor was on the table; the beer was in the refrigerator.

Q. And did you go to the refrigerator and get some of it out?

A. Yes, I did, for myself.

Q. And you poured it in some of the glasses: Is that correct?

A. Yes.

MR. PALMER: That's all.

MR. JIROLANIO: That's all.

MAYNARD STERNER, called as a witness on behalf of the Defendants and sworn.

Direct Examination

BY MR. JIROLANIO:

Q. What is your name, sir?

A. Maynard Sterner.

Q. Mr. Sterner, where do you live?

A. Kunkletown, Route 2.

Q. And are you married?

A. Yes, sir.

Q. How old are you?

A. Thirty.

Q. Are you a citizen of the United States of America?

A. Yes, sir.

Q. Were you ever in the Armed Forces of our country?

A. Yes, sir.

Q. What branch?

A. Navy.

Q. What kind of work do you do?

A. Plumbing work.

Q. And by whom are you employed?

A. M. S. Weiss & Son, Brodheadsville.

Q. And is Mr. Frantz a fellow employee of yours?

A. That's right.

Q. And have you worked with him?

A. On numerous occasions, yes.

Q. I want to direct your attention to the month of August, 1955; and I ask you whether or not you worked at the residence of Mr. Randall.

A. Yes, sir, I did.

Q. Do you remember with whom you worked?

A. With Frantz.

Q. And do you remember what days you worked with him?

A. The 18th, 19th, and 20th.

Q. Now, were you in court yesterday?

A. Yes, I was.

Q. And did you see the young ladies who testified on behalf of the Commonwealth in this case?

A. Yes, sir, I did.

Q. Now, did you see any of those young ladies the 18th of August?

A. No.

Q. Did you see them on the 19th?

A. Yes, some of them.

Q. Can you tell the Court and Jury under what circumstances, how you got to see them?

A. Well, we were called into Randall's home there to drink before we left.

Q. About what time, sir?

A. It was sometime after four, between four and four-thirty.

Q. Go ahead.

A. And the kids were sitting there in the kitchen.

Q. Who else was in the kitchen?

A. Smickley, Mr. Randall, and the blonde.

Q. Did you see anything improper going on in that kitchen?

A. No, sir, I didn't.

MR. JIROLANIO: You may cross-examine, sir.

Cross-Examination

BY MR. PALMER:

Q. Who do you mean by "The blonde"?

A. The girl sitting over there.

Q. She has red hair, doesn't she?

A. Well—

Q. Same thing?

A. I wouldn't say it's red hair either.

Q. Is her hair the same color as it was then?

A. Yes, I think it is.

Q. It's the same. O.K.

Pauline Wentzel—Direct

MRS. PAULINE WENTZEL called as a witness on behalf of the Defendant and sworn.

Direct Examination

BY MR. MILLER:

Q. What is your name, please?

A. Pauline Wentzel.

Q. Is Emma Wentzel your daughter?

A. Yes, she is.

Q. One of the girls who testified previously in this case?

A. Yes.

Q. Where do you live, Mrs. Wentzel?

A. Wind Gap, R.D. 1.

Q. Do you know the Defendant, Robert Randall?

A. Yes.

Q. How long have you known him?

A. About five years.

Q. Do you know the people in the vicinity of his home who know him?

A. Yes.

Q. What was Robert Randall's reputation amongst the people, as a law-abiding citizen, before he was arrested in this case?

A. Very good. I never heard anything bad about him.

MR. MILLER: That's all.

MR. PALMER: No questions.

MRS. CORA HEATTER, called as a witness on behalf of the Defendant and sworn.

Direct Examination

BY MR. MILLER:

Q. What is your name, please?

A. Cora Heatter.

Q. And where do you live, Mrs. Heatter?

A. Wind Gap, R.D. 1.

Q. Is Hermina Heatter, who testified here, your daughter?

A. Yes.

Q. Do you know the Defendant, Robert Randall?

A. Yes.

Q. How long have you known him?

A. Five years.

Q. Do you know the people in the vicinity of his home who know him?

A. Yes.

Q. What was Robert Randall's reputation amongst these people, as a truthful and lawabiding citizen, before he was arrested?

A. Very good.

MR. MILLER: That's all.

MR. PALMER: No questions.

WILLIAM LEMLEY, called as a witness on behalf of the Defendant and sworn.

Direct Examination

BY MR. MILLER:

Q. What is your name, sir?

A. William Lemley.

Q. Where do you live?

A. Wind Gap.

Q. Your occupation?

A. Real estate broker.

Q. Do you know the Defendant in this case, Robert Randall?

A. Yes, I do.

Q. Is this Mr. Randall (indicating)?

A. Yes.

Q. How long have you known him?

A. About five or six years.

Q. Do you know the people in the vicinity of his home who know him?

A. Generally I'd say yes.

Q. What was Robert Randall's reputation amongst these people as a truthful, lawabiding citizen before he was arrested in this case?

A. Very good, I'd say.

MR. PALMER: No questions.

MR. JIROLANIO: We rest.

MR. PALMER: We have a rebuttal witness, sir.

HOMER P. SMICKLEY, having been sworn previously as a witness on behalf of the Commonwealth, recalled in rebuttal.

MR. FISHBONE: I ask for an offer of proof, if the Court please.

MR. PALMER: I want to prove by this witness, sir, that on the 19th of August, when

these children and the plumbers were in the house, this witness saw the Defendant in the house in his pajamas rather than in blue denim trousers and that he was asked by Randall to get the beer and liquor after the children arrived and subsequently Randall paid for it or paid for a portion of it.

MR. FISHBONE: A portion of it is objected to for the reason that he has already testified as to the fact that the girls were there when he went out.

MR. MILLER: He has already testified as to when he went for the drinks.

MR. FISHBONE: He has already testified as to how he was dressed, I believe.

THE COURT: I do not think so. The objection is overruled.

(Exception noted for Defendants.)

Direct Examination

BY MR. PALMER:

Q. Mr. Smickley, on August the 19th did you or did you not go to the liquor store to buy liquor or beer?

A. I did.

Q. At whose request did you go?

A. Mr. Randall.

Q. And where was that request made?

A. In the kitchen.

Q. And who was there at the time it was made?

A. All of them.

Q. Were the children there?

A. Yes.

Q. They were there at the time Mr. Randall asked you to go: Is that correct?

A. That's right.

Q. Now, what, if any, discussion did you have with Mr. Randall as to who was to pay for this liquor or beer?

A. He asked me to go and buy it.

Q. Did he say who was going to pay for it?

A. He said he would pay for it.

Q. And did he ever pay for it?

A. Not yet.

Q. He didn't pay for any of it?

A. No.

Q. But he told you that he would pay for it: Is that correct?

A. That's right.

Q. Now, did you observe that afternoon, when the children were in the house, how Mr. Randall was clothed? What did he have on?

A. I recall him having pajamas on.

Q. Pajamas?

A. Yes.

MR. PALMER: That's all. Cross-examine.

Cross-Examination

BY MR. JIROLANIO:

Q. Mr. Smickley, could you be mistaken in your recollection that the wearing apparel were pajamas?

A. I don't think so.

Q. Is there a possibility?

A. From what I recall, he had pajamas on.

Q. That's all.

MR. PALMER: That's all. The Commonwealth rests, your Honor. Do you rest?

MR. FISHBONE: That's all.

MR. JIROLANIO: If your Honor please, I am going to renew my motion that I made before, for the same reasons as I gave at the time that the Commonwealth ended its case, and I demur, that there's no evidence for a Jury to find that Sofie Wofsie did—

THE COURT: Well, your motion now is a motion for directed verdict?

MR. JIROLANIO: Directed verdict, on the same grounds.

THE COURT: For the same reasons?

MR. JIROLANIO: Yes, for the same reasons I gave before, which I won't have to repeat.

THE COURT: The motion is denied.

(Exception noted for Defendants.)

MR. FISHBONE: If your Honor please, the Defendant Robert Randall moves for a directed verdict in his favor on the charge of corrupting the morals of the named minors, on the ground that the testimony brought out at the trial is incapable of being followed to the point where the Jury can determine beyond a reasonable

doubt the guilt or innocence of Mr. Randall, for the reason that the testimony is so conflicting that it is doubtful whether the members of the Jury can recall in any detail the testimony of the individual witnesses; and further for the reason that it's complicated by the fact that three witnesses have been cross-examined by the Commonwealth, and a very serious question arises as to the probative value of their testimony. The inclusion of that testimony in the case, whether it is for pure impeachment purposes or for probative value, is a very technical thing, and it would be a difficult thing for the Jury to distinguish. For that reason we ask that there be a directed verdict.

THE COURT: The motion is denied.

(Exception noted for Defendants.)

Mr. Jirolanio addresses Jury * * * that their testimony would have been in favor of the Defendants.

MR. PALMER: I object to this, your Honor. Their names did not come up in the course of the evidence.

MR. JIROLANIO: It's on the indictment.

MR. PALMER: When their names are mentioned in the course of the trial, the comment can be made. It's not if their names appear on the indictment.

THE COURT: The objection is sustained.

MR. JIROLANIO: Exception.

(Exception noted for Defendants.)

THE COURT: The Jury is directed to ignore the latter remark, as to why certain witnesses were not called or what effect their failure to be called has.

(Mr. Jirolanio concludes his address to the Jury.)

(Mr. Palmer addresses Jury.)

MR. JIROLANIO (at side bar, during Mr. Palmer's address to the Jury): That's prejudicial right now. I don't want to stop him. When he says, "Is that what happened?"

(Mr. Palmer continues addressing Jury.)

MR. JIROLANIO (interrupting Mr. Palmer): Now, if your Honor please, I am going to object to the remarks of the District Attorney. I didn't want to do it the first time he did it, but the second time I'm going to do it and move that he be cautioned not to use that analogy.

THE COURT: The objection is overruled.

(Exception noted for Defendants.)

MR. FISHBONE: Your Honor, when Mr. Palmer asks to cross-examine these witnesses and pleads surprise, he is asking the Jury to disbelieve these witnesses. Now, he didn't use the statement of the ten days for any affirmative evidence of any sort, and now he's trying to inject it in an affirmative way. He's now telling the Jury that the girl testified in a statement that she had been there ten times.

THE COURT: In a statement?

MR. FISHBONE: Yes. He read from the statement.

THE COURT: I do not think you can do that.

MR. PALMER: All right.

THE COURT: The objection is sustained.

(Exception noted for the Commonwealth.)

MR. FISHBONE: We would ask the Court to advise the Jury to disregard that, your Honor.

MR. MILLER: Will the Court instruct the Jury to disregard that last statement?

THE COURT (to the Jury): The Jury is directed to disregard the last statement made by counsel.

(Mr. Palmer concludes his address to the Jury.)

(At this point court adjourns to Thursday morning, February 16, 1956.)

(Pursuant to adjournment court convenes Thursday morning, February 16, 1956.)

MR. JIROLANIO: It is agreed between the Commonwealth of Pennsylvania and the attorneys for the Defendants, Robert Charles Randall and Sofie Wofsie, in No. 17 November Session 1956 and in No. 17-b November Ses-

sion 1955, that the two counts which appear in each indictment shall be merged into one and that the one count shall contain the component parts of both counts and that the Court shall instruct the Jury on the entire act covering the particular count.

I'm satisfied that we move to correct the date to read "The 19th of August."

THE COURT: As to the Sofie Wofsie indictment?

MR. JIROLANIO: As to the liquor violation, if your Honor please.

CHARGE OF THE COURT.

Ladies and Gentlemen of the Jury:

You have been sworn to try three indictments. One indictment, No. 17-b November Sessions 1955, is an indictment against the Defendant Sophia Wofsie. The indictment charges that on September the 23rd, which date has been amended to August 19, 1955, the Defendant did unlawfully sell, furnish, or give liquor and or malt or brewed beverages to a minor, namely Geraldine Mary Tomsic. You will note that the charge there is that the Defendant did unlawfully sell, furnish, or give. The second count in that indictment charges that Sophia Wofsie on that date, August 19, 1955, did unlawfully permit liquor or malt or brewed beverages to be sold, furnished, and given to a minor, namely Geraldine Mary Tomsic.

There is a similar indictment, No. 17 November Sessions 1955, against the Defendant Robert Charles Randall. That indictment contains two counts. The first count charges that the Defendant did unlawfully sell, furnish, or give liquor and/or malt or brewed beverages to minors, namely Emma Wentzel, Geraldine Mary Tomsic, and others. The second count charges that the Defendant did unlawfully permit liquor and or malt or brewed beverages to be sold, furnished, and given to minors, namely Emma Wentzel, Geraldine Mary Tomsic, and others.

Those two indictments refer to violations of the liquor laws. There are two counts in each of the indictments; the counts have been consolidated into one count. It has been agreed that the two counts in the indictments pertaining to the violation of the liquor laws be consolidated into one, so that they would read that Sofia Wofsie did unlawfully sell, furnish, or give liquor and or malt or brewed beverages to a minor or did unlawfully permit liquor and or malt or brewed beverages to be sold, furnished, and given to a minor, namely Geraldine Mary Tomsic. The indictment against Robert Charles Randall as to the violation of the liquor laws would read in the same manner. That is to say, the Court instructs you now that as to the indictments against these Defendants charging violation of the liquor laws, the two counts are to be read together and considered as one.

Indictment No. 44 November Sessions 1955 charges the Defendant Robert Randall with the misdemeanor which is styled corrupting the morals of a minor. The indictment reads that Robert Randall, on or about the 19th day of August, 1955, and at divers times within the two years last past, in Northampton County and within the jurisdiction of this court, being of the age of twenty-one years and upwards, did acts corrupting or tending to corrupt the morals of minor children, to wit, Emma Wentzel, Esther Frable, Jack Marsh, Geraldine Tomsic, and Charles Tomsic, all of said children being then and there under the age of eighteen years.

Ladies and gentlemen of the Jury, you are the sole judges of the facts of these cases as well as the sole judges of the credibility of the witnesses. It is for you to find the facts; it is for you to pass upon the credibility of the testimony given by each and every witness.

With respect to the law, the Court charges you that it is the duty of the trial Judge to give to Jurors a correct statement of the law. Jurors are sworn to decide cases on the law and the evidence. It is therefore the duty of the trial Judge to charge you that while you form your own judgment as to the facts, you will receive the law as it is given to you by the Court. It is the duty of the trial Judge to declare the law to the Jury in every criminal case. The best evidence the Jury have of the law is the instructions of the Court. Of course the Jury can render a general verdict of not guilty, and to that extent are the ultimate judges of both the law and the facts, but that does not absolve the Court from its duty of declaring the law to the Jury, nor does it absolve the Jury of the duty of accepting the law as declared by the Court.

It is your duty to reconcile the testimony of the various witnesses on the theory that all are truthful, if this can be done consistently with the truth and you believe them deserving of credit; but if this cannot be done, then it is your province to determine whom you will believe and whom you will not believe and where the truth exists. In determining the credibility of the witnesses or any of them, you may take into consideration their

manner and bearing on the witness stand, their means or lack of means of knowing the facts about which they have testified, how far—if at all—they are corroborated by other evidence in the case, whether they are contradicted or not, their power of memory or the lack thereof, their contradictory statements, if any, as shown by the evidence in the cases; and from all evidence, under the instructions of the Court, you will give to each witness the credit to which he or she is entitled and determine the rights of the parties accordingly, in accordance with the whole of the evidence and the instructions of the Court.

Under the law of this Commonwealth the accused—that is to say, the Defendants—are competent witnesses in their own behalf, and you are bound to consider their testimony. You have no right to disregard their testimony or to look upon their testimony with suspicion merely because they happen to be Defendants; but in determining what weight to give their testimony, you must apply the same tests that you apply to determine the credibility of any other witness. You may of course take into consideration their interest in the result of the trial, their manner, and the probability or improbability of their testimony and give to their testimony such weight as you, under all of the circumstances, think their testimony is entitled to. However, they should not be disbelieved merely because they happen to be Defendants. Under our law they are entitled to take the witness stand and have the right to submit to you their testimony just the same as any other witness.

I have already referred to the fact that there are three indictments in this case: Two against Robert Randall and one against Sophia Wofsie. The three indictments have been tried together, inasmuch as the two Defendants were together in so far as one of the charges is concerned, namely the charge with respect to violating the liquor laws. The charge of violating the liquor laws with respect to the Defendant Sophia Wofsie occurred at the same time that the charge of violating the liquor laws against Robert Randall occurred, so those cases were tried together for that reason. The charge against each of the Defendants arose out of the same circumstances in so far as the liquor violations are concerned. I indicate that to you merely in order that you will understand why the cases have been tried together. Generally speaking, they arise out of the same set of circumstances.

To the indictments each of the Defendans has entered a plea of not guilty. The entry of a plea of not guilty raises in favor of each of the Defendants what is known as the presumption of innocence. Defendants in criminal court are presumed to be innocent until their guilt is established beyond a reasonable doubt. Each of these Defendants is presumed to be innocent until his or her guilt is established beyond a reasonable doubt, and the burden is upon the Commonwealth to establish the guilt of each of these Defendants beyond a reasonable doubt.

A reasonable doubt is one that would cause Jurors to hesitate to act in any of the important

affairs of their own lives. If Jurors have such a doubt, it is their duty to acquit the Defendants. Jurors should not condemn unless so convinced by the evidence that they would venture to act upon that conviction in matters of the highest importance to their own interests. Our Supreme Court has recently stated an approved form of charge on the meaning of reasonable doubt. It is as follows: "The Defendant comes before you presumed to be innocent, and the burden is upon the Commonwealth to prove his guilt beyond a reasonable doubt. A reasonable doubt cannot be a doubt fancied or conjured up in the minds of the Jury to escape an unpleasant verdict. It must be an honest doubt arising out of the evidence itself, the kind of a doubt that would restrain a reasonable man or woman from acting in a matter of importance to himself or to herself."

The Court will first define the law as it relates to the charge against Defendant Sophia Wofsie and Defendant Robert Randall pertaining to or alleging a violation of the liquor laws of the Commonwealth of Pennsylvania. The Legislature of the Commonwealth has passed a Liquor Code. Among the provisions of the Liquor Code is the following: "It shall be unlawful for any licensee or the Board or any employee, servant, or agent of such licensee or of the Board, or any other person, to sell, furnish, or give any liquor or malt or brewed beverages or to permit any liquor or malt or brewed beverages to be sold, furnished, or given to any person visibly intoxicated or to an insane person or

to any minor or to habitual drunkards or persons of known intemperate habits."

Indictment No. 17-b November Sessions 1955 against Defendant Sophia Wofsie and Indictment No. 17 November Sessions 1955 against Defendant Robert Charles Randall, charging a violation of the section of the Liquor Code which the Court has read to you, do not charge any sales or the furnishing or giving of liquor or malt or brewed beverages to visibly intoxicated persons or insane persons or habitual drunkards or persons of known intemperate habits. That is not the charge. I read to you the whole section of the Code merely for the purpose of indicating to you the entire law contained in that specific provision. The charge is that these Defendants sold, furnished, or gave liquor or malt or brewed beverages or permitted liquor or malt or brewed beverages to be sold, furnished, or given to minors. That is the charge. As I have already indicated to you, the indictments have split up the charge of selling, furnishing, or giving or permitting the sale, furnishing, or giving of intoxicating beverages to minors into two counts. However, you are to consider them as one count, and they should be read together, in accordance with the provision of the Liquor Code that I have read to you.

The Court charges you as a matter of law that under the Liquor Control Act the selling, furnishing, or giving or permitting to sell, furnish, or give to minors intoxicating liquors or beverages constitutes an offense, irrespective of intention or good faith. The law makes it a misdemeanor to do any

of those things, regardless of intention, regardless of good faith. The Liquor Code is a statute that makes those acts unlawful. It is the type of statute which is in the nature of a police regulation. It is a police regulation, and it imposes criminal penalties, irrespective of any intent to violate it, the purpose being to require a degree of diligence for the protection of the public which shall render violation impossible.

The charge in this case is not that these Defendants sold; there is no evidence of any selling. The charge in this case is that the Defendants furnished or gave liquor or malt or brewed beverages to a minor or minors or permitted it, that is to say, permitted liquor or malt or brewed beverages to be furnished or given to a minor or minors. The word "Furnish" means to supply for use, to afford. The dictionary gives as synonyms of the word furnish "To give or to provide."

The Commonwealth contends that the Defendant Sophia Wofsie violated that provision of the Liquor Code. The Commonwealth contends that it has established the guilt of Defendant Sophia Wofsie beyond a reasonable doubt, and the Commonwealth makes that contention on the testimony of the several witnesses that were called by the Commonwealth to establish a violation.

The Commonwealth relies, among other testimony, on the testimony of Geraldine Tomsic, who on the date alleged in the indictment was sixteen years old but who is now seventeen and married. As the Court recalls the testimony of Geraldine

Tomsic Miller, it was to the effect that she was in Defendant Randall's home in August or September of 1955, that she had been there three or four times, that on the first occasion she was there with Emma Wentzel, a fifteen-year-old girl, with Homer Smickley, Randall, and two plumbers; that on the first occasion she was there from around two-thirty until four p.m., in the afternoon. She testified, as the Court recalls it, that on the second occasion she was in Defendant Randall's home around three o'clock in the afternoon, with Emma Wentzel, Esther Frable, and that Sophia Wofsie was there, and I believe she was unable to fix the exact date when she was there but again said that it was sometime in August or September of 1955. With respect to the violation of the Liquor Code, it was her testimony, as the Court recalls it, that the Defendant Sophia Wofsie gave vodka to the girls and that the Defendant Randall gave vodka to the boys. She further testified, as the Court recalls it, that Defendant Sophia Wofsie also gave them beer and that she poured some in their glasses.

I do not consider it necessary to review all of the testimony of each of the witnesses that were called by the Commonwealth to establish the charge against Sophia Wofsie. I have referred to the testimony of one of the witnesses called by the Commonwealth and have indicated that her testimony was to the effect that beer and vodka and intoxicating beverages were given, as she stated, to the minors present and to her, the Tomsic girl, by Defendant Sophia Wofsie. There was other testi-

mony in the case to the same effect, relating to beer, whiskey and vodka. I am not going to detail it or review my notes with respect to it. It is your duty to remember any and all of the testimony pertaining to any acts on the part of Sophia Wofsie that bring her within the provisions of the section of the Liquor Code that I have read to you.

The Commonwealth contends that if you believe the testimony offered on the Commonwealth's side of the case beyond a reasonable doubt, namely that Defendant Sophia Wofsie poured or gave or in any manner furnished any intoxicating beverages to these minors, then the Commonwealth has established her guilt beyond a reasonable doubt, irrespective of whether or not it was her liquor or her beer or irrespective of who may have happened to own the particular intoxicating beverage that was poured or given or furnished. The language of the Act is very broad, and the Court charges you as a matter of law that the ownership of the particular intoxicating beverages has no bearing on the guilt or innocence of a Defendant if it is established beyond a reasonable doubt that such Defendant furnished or gave or permitted to be furnished or given intoxicating beverages to minors.

Up to the present point I have analyzed the case against Sophia Wofsie solely from the standpoint of the Commonwealth. Sophia Wofsie took the witness stand in her own behalf and testified that she did not do any of the acts made illegal under that section of the Liquor Code. As the Court understands her contention, it is that she was a

guest in the home of the Defendant Robert Randall, that the beer and whiskey and vodka that were there in the home of the Defendant Robert Randall, all of those items were purchased by Defendant Robert Randall. It is her contention that she had nothing to do with the purchase of them nor did she have anything to do with setting those intoxicating beverages on the table, nor did she have anything to do with inviting the minors into that home. As the Court understands her contention, it is that if she did any pouring, she did it more or less as an intermediary, that she was a guest in the home, that she did not violate the section of the Code that makes it illegal to permit beer, liquor, and so on to be served, because as a guest in the home she was not in a position to prevent it, that it was Randall's home, not her home. As the Court recalls her testimony, she denied that she furnished or gave, I believe was her testimony, if the Court recalls it correctly, that these minors helped themselves to the intoxicating beverages that were there in Defendant Robert Randall's home. This is a question of fact for you to determine. It is for you to determine exactly what her situation there was. Was she a party to the furnishing or the giving of the intoxicating beverages or not? Did she join with Robert Randall in the furnishing or the giving of intoxicating beverages to these minors, if you find that such intoxicating beverages were furnished or given? It will be for you to pass upon that question.

At this point, since I have analyzed one of the cases and referred to some of the testimony, and

since I will have to do the same thing with respect to the other indictments, let me caution you that it is your recollection of the evidence that must govern, not the Court's. In referring to testimony and analyzing the testimony I will give you my best recollection. I will not intentionally misquote any of the testimony; I will give you my best recollection. However, if what the Court says about the testimony disagrees with your recollection of it, adopt your own recollection, ignore what the Court says about the testimony and accept your own recollection, because you are the sole judges of the facts, you are the sole judges of the credibility of the witnesses.

I have analyzed the liquor charge against Sophia Wofsie separately because she is in a different situation than the Defendant Robert Randall, as I have already indicated to you. The violations, if any, took place in Randall's home, not in her home. It is for that reason that I have taken her case up separately and will also take up the charge of the liquor violation separately in so far as it pertains to Defendant Robert Randall.

The Commonwealth contends that Defendant Robert Randall violated the provision of the liquor laws that I have read to you. The Commonwealth contends that it has established his guilt of a violation of the liquor laws beyond a reasonable doubt, and the Commonwealth relies on the testimony of the Tomsic boy and girl and the testimony of Homer Smickley and the testimony of any of the other witnesses pertaining to furnishing and giving

intoxicating beverages to these minors. I am merely indicating to you some of the witnesses upon whose testimony the Commonwealth relies to establish the guilt of the Defendant Robert Randall. Again I am not going to review all of the testimony. I may have omitted some of the witnesses upon whose testimony the Commonwealth relies. I have merely indicated to you certain of the witnesses whose testimony, as the Court recalls it, was to the effect that the Defendant Robert Randall furnished or gave or permitted to be furnished or given intoxicating beverages to minors.

As the Court recalls the testimony of Charles Tomsic, a seventeen-year-old boy, it was to the effect that he was in Defendant Randall's home on two occasions, the first time sometime in July, I believe he said, at or around one p.m. He testified, as the Court recalls it, that Emma Wentzel was there, Homer Smickley was there, Geraldine Tomsic, Esther Frable, Hermina Heatter, and Sophia Wofsie were also there. According to him, they all had a drink, they had whiskey and beer and vodka, it was on the table in the kitchen. As the Court recalls his testimony, it was Randall who offered him a can of beer or other intoxicating beverage. It was his further testimony, as the Court recalls it, that he got sick from the drinks that were consumed there. He was there on a second occasion, according to his testimony, with Emma Wentzel, Esther Frable, and Geraldine, his sister, at which time they were drinking. He testified that he on that occasion had only a can of beer.

According to the Court's recollection, Geraldine Tomsic testified that they drank beer and vodka downstairs on the first occasion that she was there, in August or September, and that on the second occasion that she was there on the premises of Defendant Robert Randall, both Defendant Sophia Wofsie and Defendant Robert Randall served intoxicating beverages to her and the other minors present. I have already referred to her testimony that, with respect to the vodka, Defendant Sophia Wofsie served the vodka or furnished or gave it to the girls and Defendant Randall served the vodka to the boys—served, furnished, or gave it to the boys.

Homer Smickley testified, as the Court recalls it, that Defendant Robert Randall sent him out to buy the intoxicating beverages, that the minors were there before he went out to purchase the intoxicating beverages, that Defendant Randall poured beer out for everyone that was there, and that a couple of the minors had too much to drink, and I believe he referred to the minors Esther Frable and Geraldine Tomsic. I think that was his testimony; however, it is entirely for you. It was his further testimony, as the Court recalls it, that Defendant Robert Randall sent him out to buy the intoxicating beverages and that Randall was to pay for them but that he, Homer Smickley, had not as yet been paid for the purchases that were made by Smickley.

You will understand again that I have analyzed the indictment with respect to the liquor violation as against the Defendant Robert Randall solely

from the standpoint of the Commonwealth. The Defendant denied that he furnished, gave, or permitted to be furnished or given any intoxicating beverages to these minors. It was his testimony that the intoxicating beverages were on the table, that these minors, some of them, came to his home quite frequently because he had a riding horse there and they were welcome to come into his home and onto his property and that the alcoholic beverages were there for the consumption of the adults, not for the consumption of the minors, but that they helped themselves. In brief, as the Court recalls it, that was his testimony. He denied furnishing or giving any of the drinks to these minors. Again that will be a question of fact for you to determine. Was the Defendant Robert Randall having a party merely for the adults that were there? Did he furnish the liquor and the beer for the adults and for the plumbers that were there doing some work around the place, and did these minors help themselves? It will be for you to answer those questions.

The Commonwealth contends that that was not the situation, that the minors were given and furnished these intoxicating beverages by the Defendant Robert Randall and that if you are convinced of the testimony offered on the Commonwealth's side of the case that liquor and vodka and beer were furnished or given to these minors by Randall and convinced that that testimony is true beyond a reasonable doubt, then it is your duty to convict, so the Commonwealth contends, the Defendant Robert

Randall of the violation of the section of the Liquor Code that I have read to you.

There is a further charge against Defendant Robert Randall, a charge of corrupting the morals of minor children. Again analyzing the testimony of the Commonwealth and referring to only portions of it, the Commonwealth contends that it has established Defendant Randall's guilt beyond a reasonable doubt. The Commonwealth relies on the testimony of the Tomsic girl, who has since been married, the testimony of her brother, and the testimony of several other witnesses that testified as to what went on in the Defendant Robert Randall's home.

The Commonwealth relies upon the testimony, among other testimony, of Geraldine Tomsic Miller. She not only testified to the drinks that were served and who served them, but she testified, as the Court recalls her testimony, that Defendant Robert Randall took them upstairs, where they found Sophia Worste in bed, that she had on panties and a bra, that Randall had pajamas on, that his pajamas were torn and that you could see everything, that the Defendant Randall invited these minor children to sit on his lap, with his pajamas in that condition, that he offered them money to kiss him—the money was offered to three girls, according to her testimony, as the Court recalls it; however, it is entirely for you; that the Defendant Robert Randall was fooling around with them. "Trying to fool around our breasts," and she testified, as the Court recalls it, that he put his arm

around her, the Tom-in girl, had touched her body or grabbed her body in and about her breast, that this Defendant chased them to the door, "That he went to get us." Her brother, a seventeen-year-old boy, who was there on that occasion with his sister, testified that the Defendant on that occasion was in pajamas, torn pajamas, and that his privates were hanging out.

The Commonwealth contends that that kind of conduct, if you believe that that was the affair and the conduct of the Defendant Randall, was conduct that would corrupt or tend to corrupt the morals of children, and the Court charges you that if you believe that testimony to be credible, if you believe the testimony of Detective Tommie Miller to be true and believe it beyond a reasonable doubt, then you would be justified in considering that testimony to be true beyond a reasonable doubt, in convicting this Defendant of acts that would corrupt or tend to corrupt the morals of the several children ranging from fourteen to twenty years of age, as the Court recalls the testimony as to the ages of the respective girls and boys that were there on the several occasions testified to.

That charge was brought under an Act of Assembly, a statute, which reads as follows: "Whoever, being of the age of [illegible] years and upwards, by any act corrupts or tends to corrupt the morals of any child under the age of eighteen years shall be guilty of a misdemeanor." The criminal offense defined in that Act is the performance of any act which corrupts or tends to corrupt the morals

of any child under the age of eighteen years." It is the Commonwealth's contention that by reason of the acts testified to by several of the witnesses called on the Commonwealth's side of the case the Defendant has violated that section of our Criminal Code.

Webster's New International Dictionary defines the verb "Corrupt," used in connection with "Corrupt the morals," as follows—and there are several definitions of the word "Corrupt": "Changed from a state of uprightness, correctness, truth, et cetera, to a bad state; vitiated; depraved; debased; perverted." Another definition: "To become vitiated or debased; to lose purity or virtue." Another definition: "To draw aside from the path of rectitude and duty; to induce to willful, unlawful conduct; to pervert." The word "Tend" is defined as follows: "To exert an influence in a certain direction or toward a certain end; have a bent, attitude, or tendency, aim."

Of course again I call to your attention that up to the present point I have analyzed that charge solely from the standpoint of the Commonwealth. The Defendant has taken the witness stand and has testified that no such things happened, that he was not in his pajamas, that his private parts were not exposed, that he did not offer them money. He emphatically denied all of these accusations. He testified that he did not offer any money to kiss them, that his conduct was not the conduct described by the Tomsic girl and by other witnesses. He denied that he touched the breasts of these girls or did any-

thing along that line. It was his testimony further that these girls, at least some of them, had come to his home frequently, as I have already indicated, that they came there with his permission and came there to ride his horses, that some of these girls are neighbors of his and came to his home quite frequently. He testified that he has a home there, erected on ten acres of ground, with three outhouses, which he rents. Snickley rented one of the homes or one of the apartments.

He testified that he met the Defendant Sophia Wofsie in Bethlehem after he had driven to a club in Easton and then to the Colored Voters Association in Bethlehem, that there something went wrong with his car or he was afraid that he would not be able to get back to his home, on the outskirts of Wind Gap, and that the Defendant Sophia Wofsie offered to take him home and did drive him home; that then, because of the flood situation in the county on August the 19th, he invited her to stay at his home and use one of the bedrooms there, when the Defendant Sophia Wofsie came back and told him she could not get through on account of the rains and the condition of the roads.

He testified further, as the Court recalls it, that one of these minors, Emma Wentzel, lived at his home for a while or stayed there and was well known to him and he to the Emma Wentzel family. I do not mean to indicate that there was anything wrong in the girl living the The inference that I got from the testimony was that she was there with her parents or with someone else, taking care of some situation there that was entirely proper.

The Defendant Robert Randall testified further that all that he did was to have these girls and boys meet his friend. He stated that he had a friend there that he wanted them to meet. He testified further that he went back to Bethlehem with Sophia Wofsie to get his car.

Now, in addition to denying the charges himself, he also offered the testimony of two plumbers who worked on his place. They testified, as the Court recalls it, that they saw the Defendant Randall on August the 18th, 19th, and 20th, 1955, and that they saw nothing improper going on on Defendant's premises. They testified that they saw girls there in the afternoon but that they did not see Randall do anything that was improper. They also testified, as the Court recalls it, that there was nothing improper, as they remembered it, about his dress. They were invited into the Defendant Robert Randall's home for a drink at the close of the day's work. The Defendant Sophia Wofsie also testified that there was nothing improper about Defendant Robert Randall's conduct, that he did not do anything to [illegible] along the lines that the Tomsic girl testified to, that he was dressed properly, in denims or some of his attire which was not torn and which did not expose his private parts to these girls or to anyone else. There is a contradiction as to that phase of the Defendant Sophia Wofsie's testimony. As the Court recalls it, one of the girls testified that Sophia Wofsie told him to cover up. It will be for you to determine where the truth exists as to that phase of the testimony and as to any other phase of the testimony where there is a contradiction.

Now, in addition to the testimony that I have already referred to adduced on Defendant's side of the case, the Defendant also called three character witnesses to testify to his good reputation. One of them, Pauline Wentzel, was the mother of one of the minors. Cora Heatter was also the mother of one of the minors. Both of them testified that the Defendant Robert Randall's reputation was very good. William Lemley, a real estate broker, also testified that the reputation of the Defendant was very good.

I have endeavored to present the issues involved in these cases to you, ladies and gentlemen of the Jury, as fairly as I know how. I have not referred to all of the testimony; I realize that. I have not intended to emphasize any of the testimony on one side or the other. I have endeavored to give you my best recollection and to give you the highlights of the contentions on both sides of the case. It is for you to pass upon the facts, and it is for you to pass upon the credibility of the witnesses, and I have not intended in any way to indicate to you how you should exercise your judgment on those matters.

In view of the fact that Homer Smickley was called as a witness for the Commonwealth, it is necessary for the Court to define for you the law as it pertains to the weight that should be given to his testimony. Homer Smickley was indicted and pleaded guilty to a liquor violation arising out of the same set of circumstances. He is a convicted criminal; he was an accomplice. According to the testimony, it was Smickley who was sent out by Defendant Robert Randall to buy the intoxicating bev-

erages involved in these cases. He has pleaded guilty to the charge. He was an accomplice, and he is a convicted criminal.

The Court charges you as a matter of law that there is no rule of law in Pennsylvania which forbids a conviction on the uncorroborated testimony of an accomplice; but while the law permits a conviction on the testimony of an accomplice, yet it looks with disfavor on this character of proof, and because the source of such evidence is corrupt, the Jury is admonished not to rely upon Smickley's testimony unless it is corroborated. When you review the testimony of Smickley—and what I have to say pertains only to his testimony, because he is the only accomplice in the case—you as Jurors should be satisfied upon the point of the truthfulness of his testimony, and the Court further charges you as a matter of law that you should carefully and closely scrutinize his testimony, accept it with caution, not only because of any interest that Homer Smickley might have but because his testimony is evidence from a corrupt source, in view of the fact that he was an accomplice and pleaded guilty to the charge.

The Commonwealth, of course, contends that the testimony of Homer Smickley was corroborated. Homer Smickley testified, as the Court recalls it, as to the purchase of the intoxicating beverages, and he further testified as to the attire worn by the Defendant Robert Randall; that is to say, he testified that Robert Randall was in pajamas. The Commonwealth contends that his testimony is corroborated and for that reason should be believed. It

will be for you to pass upon the credibility of the testimony of Homer Smickley in accordance with the instructions the Court has just given to you relative to the weight to be accorded the testimony of a convicted accomplice.

With respect to the evidence of the Defendant's good reputation, the Court charges you as a matter of law that evidence of the good character of the Defendant is always admissible and is to be weighed and considered by the Jury in connection with all the evidence in the case. Evidence of good character in a criminal case is not a mere makeweight, thrown in to assist in the production of a result that would happen at all events, but is positive evidence and may of itself, by the creation of a reasonable doubt, produce an acquittal.

It is also necessary for the Court to charge you with respect to the testimony of certain of the witnesses as to whom the District Attorney was permitted to cross-examine. There were several of these minors who were called by the Commonwealth as to whose testimony the Court granted the District Attorney permission to cross-examine on a plea of surprise. The Court charges you, in accordance with the point submitted by the Defendant Randall, that when the District Attorney pleaded surprise and was permitted to cross-examine Geraldine Miller, Esther Frable, and Emma Wentzel, he did so to induce you to disbelieve that which the witnesses testified to before the plea of surprise; that when the District Attorney pleaded surprise and cross-examined his own witnesses, he was asking the

Jury to disbelieve the testimony of those witnesses; that the testimony of the witnesses Geraldine Miller, Esther Frable, and Emma Wentzel as to the contents of their written statements, was not affirmative evidence, to be considered against the Defendants, but was used for the purpose of inducing you to disbelieve the witnesses; and further that the Commonwealth is bound by the testimony of the witnesses as to whom surprise is pleaded as to all testimony given by the witnesses after the plea of surprise was made; and further that any testimony elicited by the District Attorney on cross-examination of his own witnesses is binding on the Commonwealth.

Ladies and gentlemen of the Jury, you will first address yourselves to a decision on the guilt or innocence of these Defendants on each of the indictments. If the Defendants are found guilty, then you have nothing to say about the costs. In the event that you find Defendant Sophia Wofsie not guilty of the charges contained in Indictment No. 17-b November Sessions 1955, then you will have to determine by whom the costs should be paid as to that indictment. The same is true as to the two indictments No. 17 November Sessions and No. 44 November Sessions 1955 against the Defendant Robert Randall. All of these indictments charge misdemeanors, and, as I have already indicated, if there are guilty verdicts on misdemeanor cases, the Jury has nothing to do about the costs. But if there are not guilty verdicts, then the Jury has the further function of determining by whom the costs shall be paid.

Charge of the Court
Defendant's Points Affirmed and Refused

You have a right, in the event that you arrive at a not guilty verdict on any of these indictments, to place all of the costs upon the Defendant, all of the costs upon the County of Northampton; you have a right also to place all the costs upon a Prosecutor, if you find that the prosecution is brought out of malice or ill will or utterly without foundation. You may divide costs between a Prosecutor and the Defendant. You may not, however, divide costs between the County and the Defendant or the County and the Prosecutor. If any costs are placed on the County of Northampton, all of the costs would have to be placed upon the County. These are official prosecutions. The prosecutions were brought by enforcement officers of the Liquor Control Board, and while it is within your province to place costs upon them, no costs should be visited upon official prosecutors unless you should find that the prosecutions were brought in bad faith or without foundation, and there is no evidence of that in this case, as the Court recalls the testimony. The matter of placing the costs is entirely for you, in the event that you arrive at verdicts of not guilty.

Counsel for each of the Defendants has submitted points. I have already affirmed points 4, 5, 6, 7, and 8 of Defendant Robert Randall's points for charge. Points 1, 2, and 3 are the general points, which are refused and not read.

Defendant Sophia Wofsie has also submitted points for charge. Points 1, 2, and 3 are the general points; they are refused and not read. Point No. 4 is affirmed—I have already so instructed the

Jury: "There is no evidence that the Defendant sold any alcoholic beverage to any of the minors."

THE COURT (To counsel): You will notice that I have modified that point, Mr. Jirolanio. I have already instructed the Jury that there was no evidence of any sale.

THE COURT (to the Jury): Point No. 5 is refused as written. Point No. 6 is refused and not read. The Court has already instructed the Jury in acordance with that point. Point No. 7 is refused and not read, as having already been fully covered in the charge. Point No. 8 is refused and not read.

THE COURT (To counsel): Are there any additions or corrections which either side wishes to make in the charge?

MR. FISHBONE: Your Honor, in my point which you affirmed on the discussion of the plea of surprise, I named one of the witnesses whose testimony was impeached as Geraldine Miller. I would like to explain to the Jury, in case the Jury doesn't know or remember it, that she is the same person as Geraldine Tomsic, to whose testimony you referred

THE COURT: I have already told the Jury that, several times. I mentioned both of her names.

MR. FISHBONE: Well, I think it's important because of the point that the Commonwealth has tried to impeach her testimony.

THE COURT: I am going to refuse that. I have already explained that.

MR. FISHBONE: I would also like to suggest to the Court that the Court referred, in discussing Commonwealth's case, to the testimony of only two or three witnesses: Geraldine Miller, her brother, and Homer Smickley; that there were four other minor children present on the occasion on which these corrupt acts are alleged to have occurred; that none of those witnesses corroborated any of the corrupt acts, and that they were not mentioned in the charge.

THE COURT (To the Jury): Defense counsel has called to the attention of the Court that I have not referred specifically to the testimony of four of the children who were present in the Defendant Robert Randall's home. I have indicated to you that I did not think it was necessary to refer to the testimony of each and every witness. However, it is necessary for the Court to refer to the testimony of four of the children who were called on the Commonwealth's side of the case, four of the children who testified that nothing improper went on on the premises, testimony generally to the effect that the Defendant was properly dressed and that drinks were not served and so on. There were four of the Commonwealth's witnesses who did so testify, and counsel has asked me to refer to that testimony, and I agree that I should refer to it. That is the situation, and that is what happened, as you will readily recall.

Let me say, in that connection, that it is your duty to consider all of the testimony, of all of the witnesses, whether the Court refers to it or not.

I have only referred to so much of the testimony as I thought was necessary to outline to you the respective contentions of the parties. It would serve no useful purpose to start at the beginning of the case and have the Court review in detail all of the testimony of the witnesses. You have paid close attention to the testimony, and I am sure that you will analyze it fully, in accordance with the charge given to you by the Court.

Your verdict, ladies and gentlemen of the Jury, should reflect the truth as you find it to be from the whole evidence and in accordance with the rules as given you by the Court, and from that alone. By such finding you will discharge your full duty as Jurors, not only to the Defendants but to society. It is the duty of the Court and the Jury to administer the law, and it is the duty of the Jury to convict parties who violate the law. As to that you should have no hesitancy when you are satisfied from the evidence beyond a reasonable doubt that the accused are guilty. But equally you should have no hesitancy about acquitting in case you are not satisfied of their guilt beyond a reasonable doubt.

You may take the case.

(At 11:25 a. m. the Jury retires for deliberation.)

MR. PALMER: I move that the various documents which were used in this case and marked as Commonwealth's exhibits be made part of the record, even though they were not offered in evidence.

MR. FISHBONE: I will object to the granting of that motion, because the documents were used not as affirmative evidence of anything that happened in this case; they were used for the purpose of impeaching witnesses. They were not offered in evidence, they are not part of the evidence in this case, and they could be highly prejudicial to the interests of the Defendants.

THE COURT: The objection is overruled. They shall be made part of the record, even though they were not offered.

(Exception noted for Defendants.)

(At 2:38 o'clock, p. m., the Jury returns a verdict of guilty in each indictment. At the request of Mr. Fishbone the Jury is polled, and each Juror affirms the verdicts as rendered.)

Exhibit No. 1

COPY OF EXHIBIT NO. 1

I was out there about 2 times and I saw ~~Rayne~~ Rondels and he ask me to fuck him and we went out side and him and Emma are always talking dirty and I saw Rondels with a torn pair of pajam on he was running around showing his think off. talking dirty. Rondels ask Emma to go up stair in his bedroom. later on Emma goes up to the bathroom and them Rendels go up too he was up for about 10 min and she was up for about 15 minute. he was talking dirty to Estel frable too feeling around her breast. he gave beer to me, Estel, Emma, Hermina, Sandy, Charleis, Jack, He also gave Vodka to all us girls and boys. Emma was always saying How good Rondels does it to her.

Geraldine Tomsic
East 3rd Street
Wind Gap
Pa.

Exhibit No. 2

COPY OF EXHIBIT NO. 2

I went through Randall's house one day and he gave us vacca to drink. We saw a girl named Sandra and she was nude. We went upstairs because she called us up. And she got dressed and we went downstairs and had beer. We stayed for a while and then we went up Jacks. Geraldine and Ema didn't go up Jacks. They stayed at Randall's house. And that's the story.

P.S.
Geraldine told me that Randall had innercourse with Ema, but I don't believe her.

Esther Frable.

Exhibit No. 3

COPY OF EXHIBIT No. 3

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA LIQUOR CONTROL BOARD
Harrisburg, Pennsylvania
AFFIDAVIT

Commonwealth of Pennsylvania
County of Northampton ss:

Personally appeared before me, the subscriber, A. S. Onuschak, Enforcement Officer of the Pennsylvania Liquor Control Board, one Esther Arlene Frable, a credible person, who, being sworn according to law, deposes and says: I am 15 years old being born on Sept. 7, 1940. I know Robert Randall as Randall and know where he lives. He is a negro. I first knew of him by talk in July. I was there in August and have been there at least 10 times. I had beer to drink at his place about 4 or 5 times. Randall always gave me the beer. I also had whiskey to drink about 2 or 3 times. Randall always gave me the whiskey. I saw Emma Wentzel, Charlie Tomsic, Geraldine Tomsic, and Jackie Marsh there. I think all of them were drinking beer. This was on Saturday, Sept. 24th and I got there in the afternoon with Richard Ackenbach on his motorcycle. and further deponent saith not.

Sworn and subscribed before me (s) Esther Arlene Frable this 18th day of October, A. D. 1955.
(s) A. S. Onuschak

Enforcement Officer, PLCB

Exhibit No. 4

COPY OF EXHIBIT NO. 4

We went up to Randall's a few times. That is Esther, Jerry, and I. One day Jerry said come with me up to Randall's to meet his girl Sandra. I said ok, so we went. We knocked and there was no answer, we knocked again & Randall said Oh Hi. come upstairs and me my gal we went up although none of us wanted. His girl Sandra was nead on the bed she slipped panties & pajama tops on & he introduced her to us. That was all, so we went downstairs & had beer I had a few glasses and Randall said he was going to marry her so we had a toast to that. When Jerry said she was sick Esther & I took her out Wind Gap. Several other times we went up but nothing intimate between any of us. Once he would have given Esther $5 to kiss him, but she wouldn't do it. That's about all I know and it's all the truth.

Emma
Wentzell

Exhibit No. 5

COPY OF EXHIBIT NO. 5

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA LIQUOR CONTROL BOARD

Harrisburg, Pennsylvania

AFFIDAVIT

Commonwealth of Pennsylvania
County of Northampton ss:

Personally appeared before me, the subscriber, A. S. Onuschak, Enforcement Officer of the Pennsylvania Liquor Control Board, one Emma May Wentzell, a credible person, who, being sworn according to law, deposes and says: I am 15 years old being born on May 24, 1940. I know Robert Randall and generally call him Randall. He is a negro. I know him and have been going to his place for about 5 years. I have been going to his place with the knowledge and permission of my mother and father. I had beer to drink at his place on two different times. I do not remember the exact dates. I was up on a Saturday. Geraldine was there and Richard Ackenbach brought Ester Frable on his motorcycle. Randall gave Richard a can of beer. Randall also gave Geraldine and me a can of beer. We all had one shot of Seagram 7. Seagram 7 is a whiskey. and further deponent saith not.

Sworn and subscribed before me (s) Emma May Wentzell this 18th day of October, A. D. 1955
(s) A. S. Onuschak
Enforcement Officer, PLCB

I hereby certify that on April 20, 1956, I lodged in the Office of the Clerk of the Court of Quarter Sessions the foregoing transcript and upon the same date notified all of the attorneys of record in said case that the said transcript had been duly lodged and that the same would be duly certified and filed, so as to become a part of the record, if no objections thereto be made within fifteen days after such notice.

(Signed) WILLIAM J. KOCHER
William J. Kocher
Official Stenographer

Dated April 20, 1956

I hereby certify that the proceedings, evidence, and charge are contained fully and accurately in the notes taken by me on the trial of the above causes and that this copy is a correct transcript of the same.

Dated , 1956

WILLIAM J. KOCHER
Official Stenographer

The foregoing record of the proceedings upon the trial of the above cause is hereby approved and directed to be filed.

Dated ,1956

W. G. BARTHOLD, *P. J.*

Points for Chary

POINTS FOR CHARGE

(Commonwealth v. Robert Randall, Nos. 17 and 44 November Term, 1955)

Defendant, by his attorneys, Justin D. Jirolanio, David H. Miller and Herbert Fishbone, respectfully requests your Honorable Court to charge the Jury as follows:

1. Under the law, the verdict should be "not guilty".

Refused and not read.

2. Under the evidence, the verdict should be "not guilty".

Refused and not read.

3. Under the law and the evidence, the verdict should be "not guilty".

Refused and not read.

4. When the District Attorney pleaded surprise and was permitted to cross-examine Geraldine Miller, Esther Frable, and Emma Wentzell, he did so to induce you to disbelieve that which the witnesses testified to before the plea of surprise.

Affirmed.

5. When the District Attorney pleaded surprise and cross-examined his own witnesses he was asking the jury to disbelieve the testimony of the witnesses.

Affirmed.

6. The testimony of the witnesses, Geraldine Miller, Esther Frable, and Emma Wentzell as to the contents of their written statements was not affirmative evidence to be considered against the defendant, but was used for the purpose of inducing you to disbelieve the witnesses.

Affirmed.

7. The Commonwealth is bound by the testimony of the witnesses as to whom surprise was pleaded, as to all testimony given by the witnesses after the plea of surprise was made.

Affirmed.

8. Any testimony elicited by the District Attorney on cross-examination of his own witnesses is binding on the Commonwealth.

Affirmed.

Respectfully submitted,

DAVID H. MILLER PER H. F.

HERBERT FISHBONE

JUSTIN D. JIROLANIO

DEFENDANT'S POINTS

(Commonwealth v. Sophie Wofsy, No. 17-B November Term, 1955)

1. Under the weight of the evidence the verdict must be in favor of the Defendant.

Refused and not read.

2. Under the law the verdict must be in favor of the Defendant.

Refused and not read.

3. Under the law and weight of the evidence the verdict must be in favor of the Defendant.

Refused and not read.

4. There is no evidence that the Defendant sold or gave any alcoholic beverages to any of the minors.

Affirmed as modified.

5. That ownership and custody of the alcoholic beverages were in the ownership of a Mr. Randall and Smickley.

Refused as written.

6. That the Defendant was merely an invitee or guest of the Randalls.

Refused and not read.

7. That the indictment under which this Defendant is charged uses the word "furnish", but the said Liquor Act does not define the word "furnish".

Defendant's Points

Therefore, the usual or common definition must be given to the same. (The word "furnish" means to supply.)

Refused and not read.

8. That the said defendant merely poured alcoholic beverages into glasses, and that pouring is not supplying.

Refused and not read.

Respectfully submitted,
JUSTIN D. JIROLANIO,
Attorney for Defendant.

IV.

VERDICT

The Jury returns a verdict of guilty in each indictment.

V.

MOTIONS FOR NEW TRIAL

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(1) MOTION FOR A NEW TRIAL—NOS. 17 AND 44 NOVEMBER TERM, 1955

(Commonwealth v. Robert Randall)

NOW, this 20th day of February 1956, the above-named defendant, by his attorneys, Justin D. Jirolanio, David H. Miller and Herbert Fishbone, moves the Court for a new trial in the above captioned matter for the following reasons:

1. The verdict is contrary to the evidence.

2. The verdict is contrary to the weight of the evidence.

3. The court erred in admitting the following evidence over the defendant's objections:

(a). The testimony of Geraldine Miller, and particularly with respect to that portion of her testimony which was elicited on cross-examination by the District Attorney.

(b). The testimony of Esther Frable, and particularly with respect to that portion of her testimony which was elicited on cross-examination by the District Attorney.

(c). The testimony of Emma Wentzell, and particularly with respect to that portion of her testimony which was elicited on cross-examination by the District Attorney.

4. The Court erred in permitting the District Attorney to plead surprise in the examination of Geraldine Miller, Esther Frable and Emma Wentzell, and in further permitting the District Attorney to cross-examine the aforesaid witnesses.

5. The Court erred when it refused to permit defendant's counsel to cross-examine Homer Smickley with respect to the offenses for which he had been indicted.

6. The Court erred in permitting to be incorporated in the record the statements of certain witnesses which were not offered in evidence during the trial.

7. The Court erred in sustaining the objection by the District Atorney to the statement by counsel for defendant to the jury, that the jury could infer that the testimony of witnesses who appeared

on the indictment and who were not called by the Commonwealth would be adverse to the Commonwealth.

8. The Court erred in refusing defendant's motion for the withdrawal of a juror.

The defendant reserves the right to file additional and supplemental reasons for a new trial when the Notes of Testimony taken at the hearing have been transcribed and a copy thereof made available to counsel for defendant.

ROBERT RANDALL
By JUSTIN D. JIROLANIO
DAVID H MILLER
HERBERT FISHBONE
His Attorneys

Motion for New Trial—No. 17-B Nov. T. 1955
(Commonwealth v. Sophie Wofsy)

(2) MOTION FOR NEW TRIAL—NO. 17-B
NOVEMBER TERM, 1955

(Commonwealth v. Sophie Wofsy)

The Court is respectfully moved to grant a new trial in the above-stated case for the following reasons:

1. The verdict is contrary to the evidence.

2. The verdict is contrary to the weight of the evidence.

3. The Court erred in not charging the jury that merely pouring of alcoholic beverages into glasses was not furnishing alcoholic beverages to minors.

4. The Court ered in not charging to the jury that the alcoholic beverages on the premises of the Randall home was furnished and supplied by either Homer Smickley or Robert Randall and that the said Sofie Wofsie had no custody, possession or control of the alcoholic beverages upon the premises.

5. The Court erred in not granting defendant's motion for directed verdict at the completion of the Commonwealth's case when the defendant demurred to the evidence of the Commonwealth.

6. The Court erred in refusing defendant's motion for the withdrawal of a juror.

7. The Court erred in sustaining the objection of the District Attorney to the statement by counsel for defendant to the jury, that the jury could

infer that the testimony of witnesses who appeared on the indictment and who were not called by the Commonwealth would be adverse to the Commonwealth.

8. That the Court erred in not granting a directed verdict at the end of the case in general, of not guilty.

The defendant reserves the right to file additional and supplemental reasons for a new trial when the Notes of Testimony taken at the hearing have been transcribed and a copy thereof made available to the counsel for defendant.

Respectfully submitted,
JUSTIN D. JIROLANIO,
Attorney for Defendant.

VI.

MOTIONS IN ARREST OF JUDGMENT.

(1) MOTION IN ARREST OF JUDGMENT—NO. 44 NOVEMBER TERM, 1955

(Commonwealth v. Robert Randall)

AND NOW, this 20th day of February 1956, the above named defendant against whom a verdict of "Guilty" was entered in the above captioned matter on the 16th day of February 1956, by his attorneys, Justin D. Jirolanio, David H. Miller and Herbert Fishbone, moves the Court to arrest the judgment against him for the following reasons:-

1. The indictment charging defendant with corrupting the morals of minor children was vague and indefinite, in that it did not define the acts with the commission of which defendant was charged.

2. Defendant was deprived of due process of law as required by Section 1 of the 14th Amendment of the Constitution of the United States, because the offense of corrupting or tending to corrupt the morals of any child under the age of 18 years, as contained in the Act of June 3, 1953, P.L. 277, Sec. 1, Title 18, Purdon's Statutes Sec. 4532, does not define a crime with sufficient standard so as to apprise defendants of the nature of prohibited acts.

3. Defendant was deprived of due process of law as required by Section 9 of Article I of the Constitution of the Commonwealth of Pennsylvania, because the offense of corrupting or tending to corrupt the morals of any child under the age of 18 years, as contained in the Act of June 3, 1953, P. L. 277, Sec. 1, Title 18, Purdon's Statutes Sec. 4532, does not define a crime with sufficient standard so as to apprise defendants of the nature of prohibited acts.

ROBERT RANDALL
By JUSTIN D. JIROLANIO
DAVID H. MILLER
HERBERT FISHBONE
His Attorneys

Motion in Arrest of Judgment—No. 17-B
Nov. T. 1955
(Commonwealth v. Sophie Wofsy)

2) MOTION IN ARREST OF JUDGMENT—NO. 17-B NOVEMBER TERM, 1955

(Commonwealth v. Sophie Wofsy)

AND NOW, after verdict against the said Sofie Wofsie and before sentence, the said Sofie Wofsie by Justin D. Jirolanio, attorney for the defendant, moves the Court to arrest judgment herein and not pronounce the same because of manifest errors in the record appearing to wit:

1. The verdict is contrary to the evidence.

2. The verdict is contrary to the weight of the evidence.

3. The Court erred in not charging the jury that merely pouring of alcoholic beverages into glasses was not furnishing alcoholic beverages to minors.

4. The Court erred in not charging the jury that the alcoholic beverages on the premises of the Randall home was furnished and supplied by either Homer Smickley or Robert Randall and that the said Sofie Wofsie had no custody, possession or control of the alcoholic beverages upon the premises.

5. The Court erred in not granting defendant's motion for directed verdict at the completion of the Commonwealth's case when the defendant demurred to the evidence of the Commonwealth.

Motion in Arrest of Judgment—No. 17-B
Nov. T. 1955
(Commonwealth v. Sophie Wofsy)

6. The Court erred in refusing defendant's motion for the withdrawal of a juror.

7. The Court erred in sustaining the objection of the District Attorney to the statement by counsel for defendant to the jury, that the jury could infer that the testimony of witnesses who appeared on the indictment and who were not called by the Commonwealth would be adverse to the Commonwealth.

8. That the Court erred in not granting a directed verdict at the end of the case in general of not guilty.

The defendant reserves the right to file additional and supplemental reasons for a new trial when the Notes of Testimony taken at the hearing have been transcribed and a copy thereof made available to the counsel for defendant.

Respectfully submitted,
JUSTIN D. JIROLANIO
Attorney for Defendant

VII.

ADDITIONAL REASONS IN ARREST OF JUDGMENT

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(1) ADDITIONAL REASONS IN SUPPORT OF MOTION IN ARREST OF JUDGMENT—NO. 17-B NOVEMBER TERM, 1955

(Commonwealth v. Sophie Wofsy)

The defendant, Sofie Wofsie, by her attorney, Justin D. Jirolamio, having reserved the right to file additional reasons in support of her motion in arrest of judgment, herewith assigns the following additional reasons:

1. The Commonwealth failed to prove, during the trial of the case that defendant, Sofie Wofsie, was a licensee of the board, or an employee, servant or agent of a licensee or of the board, or any other person as defined by Section 493, Paragraph 1 of the Liquor Code (47 P.S. 4-493(1)). The Court, therefore, erred in refusing defendant's motion for a directed verdict.

2. That the particular section of the Pennsylvania Liquor Control Board Act in which the defendant, Sofie Wofsie, was charged as violating re-

Addition Reasons in Support of Motion—
No. 17-B Nov. T. 1955
(Commonwealth v. Sophie Wofsy)

ferred only to a licensee of the board or an employee, servant or agent of the licensee or of the board and that the Liquor Control Board Act was a statute governing the traffic in liquors by either the board, licensee, or agent, servant or employee of either the board or licensee.

Respectfully submitted,
JUSTIN D. JIROLANIO
Attorney for Defendant.

April 27, 1956.

VIII.

PETITION FOR ALLOWANCE TO FILE MOTION IN ARREST OF JUDGMENT NUNC PRO TUNC

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(1) PETITION FOR ALLOWANCE TO FILE MOTION IN ARREST OF JUDGMENT NUNC PRO TUNC—NO. 17 NOVEMBER TERM, 1955

(Commonwealth v. Robert Randall)

To the Honorable, the Judges of said Court:

The petition of Robert Randall, the above-named defendant, by his attorneys, Justin D. Jirolanio, David H. Miller and Herbert Fishbone, RESPECTFULLY REPRESENTS:

1. That your petitioner was indicted on the allegation of having violated Section 493, paragraph 1 of the Pennsylvania Liquor Code (47 P.S. 4-493 (1)) which provides as follows:

> "(1) For any licensee of the board, or any employe, servant or agent of such licensee or of the board, or any other person, to sell, furnish or give any liquor or malt or brewed beverages, or to permit any liquor or malt or brewed beverages to be sold, furnished or given,

to any person visibly intoxicated, or to any insane person, or to any minor, or to habitual drunkards, or persons of known intemperate habits."

2. That a trial was held in the above captioned matter on the 14th day of February 1956. The jury returned a verdict of "guilty."

3. That subsequent to the trial, defendant's attorneys filed in his behalf a timely motion for a new trial, but did not file a motion in arrest of judgment.

4. That the above-captioned action was tried together with (a) No. 44 November Term 1955, in which defendant was found guilty of the charge of corrupting the morals of minors; and with (b) No. 17-B November Term 1955, wherein Sofie Wofsie was the defendant who was charged and found guilty of violating the aforementioned provisions of the Pennsylvania Liquor Code.

5. That subsequent to the trial, a motion in arrest of judgment was timely filed on behalf of Sofie Wofsie.

6. That the indictments and trial of both Sofie Wofsie and defendant Robert Randall, with respect to violation of the Pennsylvania liquor Code, were based upon the same facts, to wit: That Sofie Wofsie and Robert Randall had furnished or given liquor or malt or brewed beverages to minors.

Petition for Allowance to File Motion in Arrest of Judgment Nunc pro Tunc—No. 17 Nov. T. 1955
(Commonwealth v. Robert Randall)

7. That it was not alleged nor was it proved by the Commonwealth that either Sofie Wofsie or Robert Randall was a licensee of the Liquor Control Board, or a servant, employee, or agent of such licensee.

8. That your petitioner is of the belief that the failure of the Commonwealth to establish a relationship between a licensee of the Pennsylvania Liquor Control Board and petitioner, would entitle petitioner to either a directed verdict in his behalf or an order of the court in arrest of judgment.

9. That the motion in arrest of judgment on behalf of Sofie Wofsie will be argued at the same time as petitioner's motion for a new trial.

10. That the same question of law would be presented on behalf of your petitioner if he were permitted to file a motion in arrest of judgment, as will be presented on behalf of Sofie Wofsie.

WHEREFORE, your petitioner prays that your Honorable Court enter an order permitting him to file a motion in arrest of judgment, nunc pro tunc.

And he will ever pray,

ROBERT RANDALL

(Affidavit)

IX.

OPINION OF THE COURT EN BANC

(Nos. 17, 17-B and 44 November Term, 1955)

Defendant, Robert Randall, was indicted[1] for corrupting the morals of children under the age of 18 years, contrary to the Act of June, 1953, P. L. 277, sec. 1, 18 P.S. sec. 4532. He was also indicted[2] for unlawfully selling, furnishing and giving liquor and/or malt or brewed beverages to minors, contrary to sec. 493(1) of the Liquor Code of 1951, Act of April 12, 1951, P. L. 90, Art. XIV, sec. 493, as amended, 47 P.S. 493. Defendant, Sofie Wofsy, was similarly indicted[3] for violating this section of the Liquor Code. Defendants were tried together, it appearing that the charges against each defendant occurred at the same time and arose out of the same set of circumstances. The jury returned verdicts of guilty on each of the indictments. Thereafter defendants filed motions in arrest of judgment and for a new trial.

The Commonwealth's evidence established that on at least one occasion, viz., August 19, 1955, Charles Tomsic, age 17, Geraldine Tomsic, age 16, Hermina Heatter, age 12, Jack Marsh, age 17, Emma Went-

[1] Indictment No. 44 November Term, 1955.
[2] Indictment No. 17 November Term, 1955.
[3] Indictment No. 17-B November Term, 1955.

zell, age 15, and Esther Frable, age 14, were at the home of defendant, Robert Randall, a widower, 37 years of age. Defendant, Sofie Wofsy, a divorced woman, over 21 years of age, was also present. Randall, who lived at R. D. No. 1, Wind Gap, Northampton County, Pennsylvania, met Sofie Wofsy at the Colored Voters Association in the City of Bethlehem. They left the Colored Voters Association the evening of August 18, 1955 and drove to Randall's home in Wind Gap. Sofie Wofsy remained at Randall's home the night of August 18th and the following day, August 19th, when and where defendants committed the unlawful acts charged against them. Randall took some of the children to a bedroom in his home where he introduced them to Sofie Wofsy, who was then in bed clad in pants and a bra. Randall was clad in a pair of torn pajamas which exposed his private parts. Defendants and the children then went downstairs and engaged in a drinking party. Beer, whiskey and vodka were furnished to the children by defendants. One of the boys became sick from the drinks. Randall, while still clad in pajamas and with his private parts exposed, invited several of the girls to sit on his lap and offered them money to kiss him and "fooled around their breasts". While thus clad and after the intoxicants had been furnished Randall asked three of the girls to have intercourse with him.

There is no question in our mind that the conduct of defendants detailed in the present case affected public morals, was a matter of community concern, and became a subject of investigation and

punishment under the provisions of the Criminal Code and the Liquor Control Act.

Defendant Randall seeks to arrest judgment on the verdict of guilty rendered against him on the charge of "corrupting the morals of children" on the ground that the Act of June 3, 1953, P. L. 277, 18 P.S. sec. 4532, defining the crime, does not provide a standard adequate to satisfy the requirements of due process. The statute provides:

> "Whoever, being of the age of twenty-one years and upwards, by any act corrupts or tends to corrupt the morals of any child under the age of eighteen years, or who aids, abets, entices or encourages any such child in the commission of any crime, or who knowingly assists or encourages such child in violating his or her parole or any order of court, is guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine not exceeding one thousand dollars ($1000) or undergo imprisonment not exceeding three (3) years, or both.
>
> "A conviction under the provisions of this section may be had whether or not the jurisdiction of any juvenile court has attached or shall thereafter attach to such child or whether or not such child has been adjudicated a delinquent or shall thereafter be adjudicated a delinquent.
>
> "In trials and hearing upon charges of violating the provisions of this section, knowledge of the minor's age and of the court's orders

and decrees concerning such minor shall be presumed in the absence of proof to the contrary."

Defendant Randall challenges the validity of the statute on the ground that the words "corrupts or tends to corrupt the morals of any child" are so vague and indefinite in their meaning that they are incapable of interpretation and enforcement. We reject this contention.

The universally accepted rule governing the constitutional question raised is thus stated in 12 Am. Jur., Constitutional Law, sec. 565: "It is a general principle of statutory law that a statute must be definite to be valid. A statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law. On the other hand, where the words assailed, taken in connection with the context, are commonly understood their use does not render a statute invalid." (Quoted with approval in Com. v. Klick, 164 Pa. Superior Ct. 449, 453.)

It should be remembered that we are *not* here dealing with a moral concept about which our people widely differ; corrupting the morals of children is condemned throughout our land. According to common understanding, the term "morals" must be taken to refer to the moral standards of the community, the "norm or standard of behavior which struggles to make itself articulate in law:" Cardozo, Paradoxes of Legal Science, pp. 17, 41, 42. "'Sound

morals as taught by the wise men of antiquity, as confirmed by the precepts of the gospel * * * are unchangeable. They are the same yesterday and today.' We see no reason to retreat from those ideas. 'We are a religious people whose institutions presuppose a Supreme Being:' Zorach v. Clauson, 343 U. S. 306, 313, 72 S. Ct. 679, 684, 96 L. Ed. 954. Our Federal and State Constitutions assume that the moral code which is part of God's order in this world, exists as the substance of society. The people of this State have acted through their legislature, on that assumption. We have not so cast ourselves adrift from that code nor are we so far gone in cynicism, that the word 'immoral' has no meaning for us. Our duty, as a court, is to uphold and enforce the laws, not seek reasons for destroying them." Commercial Pictures Corp. v. Board of Regents, etc., 113 N. E. 2nd 502, 511, 305 N. Y. 336.

The comprehensive words of the statute, "whoever, being of the age of twenty-one years and upwards, by any act corrupts or tends to corrupt the morals of any child under the age of eighteen years" certainly convey concrete impressions to the ordinary person. The common sense of the community, as well as the sense of decency, propriety and the morality which most people entertain is sufficient to apply the statute to each particular case, and to individuate what particular conduct is rendered criminal by it.

It is obvious that the mandates of the statute are salutary measures designed to protect children.

"The ways and means by which the venal mind may corrupt and debauch the youth of our land, both male and female, are so multitudinous that to compel a complete enumeration in any statute designed for protection of the young before giving it validity would be to confess the inability of modern society to cope with the problem of juvenile delinquency:" State v. McKinley, 202 P. 2nd 964, 967, 53 N. M. 106; State v. Harris, 141 S. E. 637, 105 W. Va. 165. The general language of the statute, therefore, is no valid objection to it on constitutional grounds. Unless words of such seeming generality as "moral" and "immoral" were valid in statutes, government itself would become impossible. Manifestly, there can be no objection to the use, in a statute, of words like "corrupts the morals" or "tends to corrupt the morals of any child," which include many things, all of which are intended by the legislature to be covered, otherwise, there would be barred from statutory use such customary verbiage as "fraudulent", "due", "negligent", "arbitrary", "reasonable", etc.

It is not a valid criticism that such general moral standards may vary slightly from generation to generation. Such variations are inevitable and do not affect the application of the principle at a particular period in time: Parmalee v. U. S., 72 App. D. C. 203, 113 F. 2nd 729. The highest court in the land has recognized that the "use of common experience as a glossary is necessary to meet the practical demands of legislation" and that the "requirement of reasonable certainty does not preclude the use of

ordinary terms to express ideas which find adequate interpretation in common usage and understanding:" Sproles v. Binford, 286 U. S. 374, 393, 52 S. Ct. 581, 587, 76 L. Ed. 1167. Even in criminal law, "the test is whether the language conveys sufficiently definite warning as to the prescribed conduct when measured by common understanding and practices:" Jorden v. DeGeorge, 341 U. S. 223, 231, 232, 71 S. Ct. 703, 708, 95 L. Ed. 886.

The constitutionality of similar statutes defining crimes in general terms has been upheld by many courts where the general terms used in the particular statute get precision from common standards of morality prevalent in the community.

The validity of statutes making it a crime to contribute to the delinquency of minors has been upheld in our own State and other jurisdictions: Com. v. Stroik, 175 Pa. Superior Ct. 10; Com. v. Wink, 170 Pa. Superior Ct. 96; Com. v. Jordan, 136 Pa. Superior Ct. 242; People v. Friedrich, 52 N.E. 2d 120 (Ill.); State v. Montalbo, 110 A. 2d 572 (N. J.); State v. Roessler, 266 P. 2d 341 (N. M.).

In Com. v. Boulden, 179 Pa. Superior Ct. 328, the jury found the defendant guilty on two indictments charging him with corrupting the morals of two seven-year-old girls. The charge was brought under the statute in question. The case on its facts is similar to the instant case. The Superior Court ordered a new trial because of the erroneous admission of evidence. The constitutionality of the statute was not questioned.

In Com. v. DeGrange, 97 Pa. Superior Ct. 181, defendant was convicted under indictment charging him with an indecent assault upon a female child between eight and nine years of age. Our Superior Court (p. 186) held: "It is not necessary that the Commonwealth be able to point to a 'precise definition' of an offense in the textbooks or adjudicated cases in order to show that it is an offense at common law: * * *. 'Whatever openly outrages decency and is injurious to public morals is a misdemeanor at common law': * * *."

In Com. ex rel. v. Amer. Baseball Club of Philadelphia, 290 Pa. 136, at page 143, our Supreme Court held that the Sunday Act of April 22, 1794, 3 Sm. L. 177, forbidding "any worldly employment on Sunday" was sufficiently definite to meet constitutional requirements. At page 143 the Court stated: "When its language is given its ordinary not a strained construction, its meaning we think is plain. It may be that those who do not wish to understand or abide by its provisions find them uncertain; surely those who wish to follow the custom of our people in Sunday observance do not so find the interdictions of the statute. We can see no basis whatever for the argument that the act violates the 14th Amendment to the federal Constitution."

In Com. v. Klick, 164 Pa. Superior Ct. 449, it was claimed that the provisions of sec. 1002 (a) of the Vehicle Code of May 1, 1929, P. L. 505, as amended, were so vague, indefinite and uncertain as to be unconstitutional. That section provides: "Any per-

son driving a vehicle on a highway shall drive the same at a careful and prudent speed, not greater than nor less than is reasonable and proper, having due regard to the traffic surface, and width of the highway, and of any other restrictions or conditions then and there existing, * * *." Our Superior Court (p. 453) stated: "The mandate of sec. 1002(a) is a salutary police measure limiting the operation of motor vehicles, in the public interest. To define specifically permissible rates of speed under every conceivable condition would be manifestly impossible; hence the general language of sec. 1002(a) is no valid objection to it on constitutional grounds. The ordinary person can understand what standard of conduct is imposed, as well as what he may do and what is forbidden under this provision of the Act. The same criticism which defendant urges here might be directed to sec. 1001 (75 P. S. sec. 481) of the Act making reckless driving unlawful. What is reckless driving or what is failure to drive at a careful and prudent speed depends upon the particular circumstances. As in the case of reckless driving, the determination of what constitutes driving 'too fast for conditions' is for the finder of the facts. * * *"

The term "moral turpitude" has been held adequate to satisfy even the strict rule applicable to criminal statutes: Jordan v. De George, 341 U. S. 223, 232, 71 S. Ct. 703, 708, supra. The term "good moral character" as used in the immigration and nationality laws has frequently been applied by the courts. The measure applied is the "common stand-

ard of morality" prevalent in the community: Estrin v. U. S., 2 Cir., 80 F. 2nd 105; or the "common conscience" of the community: Johnson v. U. S., 2 Cir., 186 F. 2nd 588, 590.

We have not overlooked the recent decision of our Supreme Court in Hallmark Productions, Inc. v. Carroll, 384 Pa. 348, holding unconstitutional the Motion Picture Censorship Act of May 15, 1915, P. L. 534, as amended, 4 P. S. sec. 41. The Act provides that the Pennsylvania State Board of Censors "shall disapprove such (motion pictures) as are sacrilegious, obscene, indecent, or immoral, or such as tend, in the judgment of the board, to debase or corrupt morals." In our opinion the Hallmark decision is not controlling in the case before us. The Court relied upon the decision of the Supreme Court of the United States in Burstyn v. Wilson, 343 U. S. 495. We deem it significant that the Supreme Court in the Burstyn case specifically pointed out, "Since the term 'sacrilegious' is the sole standard under attack here, it is not necessary for us to decide, for example, whether a state may censor motion pictures under a clearly drawn statute designed and applied to prevent the showing of obscene films. That is a very different question from the one now before us, * * *. We hold only that under the First and Fourteenth Amendments a state may not ban a film on the basis of a censor's conclusion that it is 'sacrilegious' ".

It is our considered judgment that the statute under consideration, when viewed in its proper setting,

is not unconstitutional for lack of precise standards. There can be no basically valid disagreement in civilized society as to what acts "corrupt or tend to corrupt" the morals of children.

Defendants seek to arrest judgment on the convictions for furnishing liquor or malt or brewed beverages to minors, on the ground that the prohibitions contained in section 493 of the Liquor Code of 1951 [1] do not apply to them since defendants were not licensees nor the employes, servants or agents of licensees.

Sec. 493, sub-paragraph (1) of the Liquor Code of 1951, supra, provides: "It shall be unlawful (1) for any licensee or the board, or any employe, servant or agent of such licensee or of the board, *or any other person*, to sell, furnish or give any liquor or malt or brewed beverages, or to permit any liquor or malt or brewed beverages to be sold, furnished or given, to any person visibly intoxicated, or to any insane person, or to any minor, or to habitual drunkards, or persons of known intemperate habits." (Emphasis supplied)

Defendants argue that under the "ejusdem generis" rule the words "any other person" refer to persons in the same class as those enumerated, i.e., licensees, the board, or any employee, servant or agent of licensees or the board, and that defendants do not fall within any of these classes. The argu-

[1] Act of April 12, 1951, P. L. 90, Art. IV, sec. 493, as amended, 47 P. S. sec. 4-493

ment is without merit. The doctrine of ejusdem generis does not require that the general terms "or any other person" be limited in their scope to the persons specifically enumerated.

"The doctrine of ejusdem generis is but a rule of construction to aid in ascertaining and giving effect to the legislative intent, where there is uncertainty, and does not warrant the court in subverting or defeating the legislative will by confining the operation of a statute within narrower limits than intended by the lawmakers. If, on consideration of the context and whole law upon the subject, and the purposes sought to be effected, it is apparent that the legislature intended the general words to go beyond the class specially designated, the rule does not apply:" 50 Am. Jur., Statutes, sec. 250; see also Endlich on Interpretation of Statutes, sec. 410; Com. v. Klucher, 326 Pa. 587, 591.

When the above tests are applied to the statute in question it is obvious that there is no uncertainty in the meaning of the words employed by the legislature.

The purpose of the Liquor Code is set forth in sec. 4(a), 47 P. S. sec. 1-104, as follows: "This act shall be deemed an exercise of the police power of the Commonwealth for the protection of the public welfare, health, peace and morals of the people of the Commonwealth and to prohibit forever the open saloon, and all of the provisions of this act shall be liberally construed for the accomplishment of this purpose."

Sec. 102, 47 P. S. sec. 1-102, defines the word "person" to mean "a natural person, association or corporation"

Secs. 491, 492 and 493, 47 P. S. secs. 4-491, 4-492, 4-493, set forth in separate paragraphs the "Unlawful acts relative to liquor, alcohol and liquor licensees," the "Unlawful acts relative to malt or brewed beverages and licensees," and the "Unlawful acts relative to liquor, malt and brewed beverages and licensees." We deem it noteworthy that the legislature carefully differentiated between "persons", "licensees", "manufacturers", etc., in its enumeration of prohibited acts. In some instances all "persons" are prohibited from doing certain things; in other instances the prohibition applies only to licensees of various types or their "servants, agents or employes" etc. This is a clear indication that the legislature intended that some of the prohibitions were to apply to all persons while others were to apply only to "licensees", or "their servants, agents or employes".

It is particularly significant that sec. 493 sets forth 25 prohibited acts relative to liquor, malt and brewed beverages, and that the words "or any other person" are included only in the sub-paragraph which makes it unlawful to sell, furnish or give any liquor or malt or brewed beverages to minors. It is significant also that minors are not the only class of persons to whom liquor or malt or brewed beverages may not be sold, furnished or given. Visibly intoxicated persons, insane persons, habitual drunk-

ards and persons of known intemperate habits are similarly protected.

We think that the legislature in using the words "or any other person" deliberately selected these words in order to prohibit minors, visibly intoxicated persons, insane persons, habitual drunkards, and persons of known intemperate habits, from obtaining liquor, malt or brewed beverages, whether by purchase or gift, from licensees or any other persons. The intention of the legislature to protect the classes of persons named is the underlying consideration. If we were to restrict this section of the Act to "licensees" or their "servants, agents or employes," we would nullify the very purpose of the Act.

The prohibition against sales etc. to certain protected classes of persons is not new law. Sec. 17 of the Act of May 13, 1887, P. L. 108 (repealed) declared such sales etc. illegal by "any person with or without license". In construing this Act of Assembly the Supreme Court in Altenburg v. Commonwealth, 126 Pa. 602, at pp. 611, 613-614, stated: "The licensed dealer may sell to all persons except those who belong to the excepted classes. A man without a license may give liquors in like manner, but to the excepted classes no man may lawfully sell or give. * * * We incline to the opinion, * * * that a citizen may use on his own table or in his own house just such beverages as he pleases. That is a matter of private habit or of domestic usage, with which the Act of 1887 does not intermeddle." It is only when

the conduct of the individual is such that the public morals or the public peace are affected by it, that it becomes a matter of public concern and is subject to the examination and control of the criminal courts. * * * So, the furnishing of drink to one already visibly intoxicated is a matter of public concern. The law does not restrain a man's private indulgence in drink. It does take notice of public drunkenness. If one has already passed the line of sober self-control, all men licensed or unlicensed must take notice of it and regulate their conduct accordingly. They must not furnish, by sale, gift or otherwise, the further supply of drink that may turn the excited man into an unreasoning brute. Such restrictive provisions, like the laws regulating the sale of poisons and of fire arms, are properly within the range of a wise exercise of the police power and ought to be faithfully enforced." These pronouncements apply with equal force to the furnishing of intoxicants to minors.

We declare unequivocally, that defendants' conduct in furnishing liquor to minors, as established in the case before us, affected public morals, concerned the community and was a matter for investigation and punishment under the provisions of the Liquor Control Act. We quote with approval the significant words of Staples, P. J. in Commonwealth v. Quick, 15 Dist. 260, at p. 261 (Monroe County): "No adult person can justify the furnishing of liquors under the circumstances as detailed in this case, and it is time a lesson were taught and attention called to the fact that there are in existence

laws which meet violations of this nature by appropriate punishment."

Defendants' motions in arrest of judgment are therefore severally overruled.

In support of the motions for a new trial defendants assert that the trial Judge erred in refusing to permit defense counsel to cross-examine Commonwealth's witness, Homer Smickley, concerning the charge of "corrupting the morals of minor children" which had been lodged against him and later withdrawn.

Homer P. Smickley was indicted to No. 45 November Term, 1955 on two counts: One, charging him with corrupting the morals of children; and the other, charging him with furnishing liquor and/or malt or brewed beverages to minors. The charges arose out of the same set of circumstances as the charges against defendants. When the cases were called for trial the district attorney asked leave of Court to withdraw the charge of "corrupting morals" against Smickley, stating that the Commonwealth's evidence would establish only that Smickley had furnished liquor or beer to the minors. The district attorney advised the Court that he felt it unfair to charge Smickley with corrupting the morals of the children in question and also with furnishing them liquor or beer, when the evidence on both charges was precisely the same. The Court thereupon granted permission to the district attorney to withdraw the "corrupting morals" charge against Smickley.

Smickley was called as a Commonwealth's witness. At the very outset of his examination the district attorney elicited the following information:

"Q. Your name is Homer Smickley: Is that right, sir?

A. Yes.

* * * * * * *

Q. And you are now over in the Northampton County Prison: Is that correct, sir?

A. That's right.

Q. Why are you over in the Northampton County Prison?

A. On a parole violation.

Q. For a parole violation? And the violation was what, sir? What were you arrested for?

Mr. Jirolanio: If your Honor please, I object to this.

Q. Well, did you plead guilty in this court yesterday?

A. Yes, sir.

Q. To what?

A. To a liquor law violation.

Q. And that was in connection with this Randall case: Is that correct?

A. Yes."

The cross-examination of Smickley on this phase of the case was as follows:

"Q. I believe you testified that you were charged with a violation of the Liquor Code. I

think you testified that you were charged with violating the Pennsylvania Liquor Code and that you pled guilty to that, did you not, sir?

A. Yes, sir.

Q. You were also charged with corrupting the morals of minor children, were you not, sir?

A. That's right.

Mr. Palmer: I object, sir, on the ground that it's outside the scope of direct and also irrelevant.

The Court: The objection is sustained."

The above record clearly portrayed to the jury the nature of Smickley's connection with the proceeding so that the jury was under no missapprehension as to his interest, possible bias or prejudice, or that his testimony may have been given with expectation of immunity, clemency or leniency. Smickley's position was defined with sufficient clearness. The jury was informed that he had pleaded guilty to a violation of the Liquor Code and that he had also been charged with corrupting the morals of the children in question. Smickley answered that he had been so charged before the district attorney entered his objection. No motion was made to strike Smickley's answer from the record, nor was the trial Judge requested to instruct the jury to ignore this portion of his testimony. Moreover, the jury was adequately instructed that they "should be satisfied upon the point of the truthfulness of his testimony," and "should carefully and closely scrutinize his testimony, accept it with caution, not only because of any interest that (he) might have but because his

testimony is evidence from a corrupt source, in view of the fact that he was an accomplice and pleaded guilty to the charge."

The law governing this phase of the case is set forth in Com. v. Mulroy, 154 Pa. Superior Ct. 410, at pp. 416, 417: "If the witness is under indictment for the same crime, or for a crime growing out of, closely related to, the very offense for which the defendant is being tried, so as to form a part of the same occurrence or transaction, it is proper for the jury to know it, as bearing on the witness's interest in the immediate matter: * * *. 'When the co-indictee testifies for the accused, his situation here also may be considered as tempting him to exonerate the other accused and thus help towards his own freedom': 3 Wigmore on Evidence (3d Ed.) sec. 967. So, too, if the witness, thus under indictment, testifies for the Commonwealth, it may be that his testimony was biased because given under promise or expectation of immunity or leniency from the officers conducting the prosecution being tried: * * *: and the jury are entitled to know it."

The Commonwealth suggests that the foregoing rules of law are not applicable nor controlling because the corrupting morals charge, concerning which defense counsel proposed to cross-examine Smickley, had been withdrawn prior to trial, and therefore Smickley was not under indictment on that charge when he testified for the Commonwealth.

We need not rely upon this technical view of the situation. In light of the reasons given by the

district attorney as to why the charge against Smickley had been withdrawn, further questioning of him relative thereto would have served only to mislead the jury. Furthermore, the testimony given by Smickley as a Commonwealth's witness was virtually admitted by defendant Randall, and none of Smickley's testimony implicated defendant, Sofie Wofsy. Accordingly, any room for argument that Smickley's testimony was biased or given under promise or expectation of immunity or lenieney was dissipated and any possible harm to defendant Randall was eliminated by defendant himself. Cf. Com. v. Lenousky, 206 Pa. 277.

For the reasons hereinabove given, we are satisfied that the questioned ruling, if error at all, was harmless error.

Mere error in the abstract is not sufficient to warrant a retrial and where the conclusion is inescapable that error did not influence the jury against accused, or deprive him of his right to a fair trial, a new trial will not be granted: Com. v. Linkowski, 363 Pa. 420, 424; Com. v. Barnak, 357 Pa. 391, 423, 424; Com. v. Felgoise, 129 Pa. Superior Ct. 74, 79. If error does not prejudice defendant, judgment even in a criminal case will not be reversed: Com. v. Petrillo, 341 Pa. 209, 232; Com. v. Oldham, 178 Pa. Superior Ct. 354, 358; Com. v. Netkowiez, 170 Pa. Superior Ct. 125.

The remaining contention, that the trial Judge improperly permitted the district attorney, on pleas of surprise, to cross-examine three of the minors as to

their antecedent signed statements, is also without merit.

The Commonwealth, as was its duty, called all of the minors as eye-witnesses. Three of them had lapses of memory and then began contradicting the antecedent signed statements which they had given to the law enforcement officers. Their testimony and their antecedent statements differed materially on important phases of the case. A comparison of the record of their direct testimony with their antecedent signed statements will clearly reveal the inconsistencies and contradictions. A detailed discussion of them would serve only to prolong an already lengthy opinion. Confronted with this situation the Commonwealth pleaded surprise and requested permission to cross-examine the witnesses on the basis of their antecedent signed statements. The trial Judge granted the Commonwealth's request and the district attorney then proceeded to show the inconsistencies and contradictions by examining the witnesses from their antecedent signed statements. We are of opinion that in the circumstances the trial Judge did not abuse his discretion in allowing the Commonwealth to impeach these witnesses.

The problem of impeaching one's own witnesses is fully discussed in Selden, Admr. v. Metropolitan Life Ins. Co., 157 Pa. Superior Ct. 500. More recently, in Com. v. Smith, 178 Pa. Superior Ct. 251, at page 255, the Superior Court analyzed the law as follows: "The determination of whether the impeachment will be allowed is one within the judicial

discretion of the trial judge, * * *. Proper groundwork must be laid and before the impeachment will be allowed the party calling the witness must show first that he has been genuinely surprised or 'taken unawares'; that is, he must show the prior statement upon which he relied and how that statement differs in material respects from the testimony. * * * Secondly, he must show his right to rely upon the previous statement. He may not rely upon a prior oral statement of the witness unless such was made in the presence of the party calling him or his counsel. Where, however, * * * the prior statement is in writing and subscribed by him 'the law treats this as a sort of continuing inducement and neither needs to have been made in the presence of the party or his counsel. The plea of surprise must rest upon some kind of a representation by the witness so the counsel was thereby induced to call him.' * * * Thirdly, it (is) necessary to show that the prior statement was inconsistent with the testimony of the witness given previous to the plea of surprise."

The foregoing requirements were fully satisfied in the instant case. The Commonwealth demonstrated adequately that it was genuinely surprised; the plea of surprise rested upon prior *written* statements upon which the Commonwealth had the right to rely; the prior written statements were clearly inconsistent with the testimony of the witnesses given previous to the plea of surprise.

Defendants advance the additional complaint that the district attorney should not have been permitted

to cross-examine on the antecedent signed statements without first introducing them into evidence. These statements were not introduced by either side although proper groundwork had been laid for their introduction by the district attorney. The only information the jury had as to the inconsistencies contained in the statements was that obtained when the district attorney cross-examined the witnesses on certain portions of the statements. Had the antecedent signed statements been introduced into evidence and read in their entirety to the jury, or had they gone out to the jury room, the jury would have been apprized of many more inconsistencies and contradictions than were elicited on cross-examination. In these circumstances it is difficult to understand why defendants assign as error the district attorney's failure to introduce the antecedent statements into evidence. The failure to introduce them was helpful rather than harmful to defendants.

It should be noted also that the trial Judge in accordance with the request of defense counsel cautioned the jury concerning the limited purpose for which the Commonwealth was permitted to cross-examine its own witnesses. The trial Judge charged the jury in the identical words of the points submitted by defendant Randall, "that when the District Attorney pleaded surprise and was permitted to cross-examine Geraldine Miller, Esther Frable, and Emma Wentzel, he did so to induce you to disbelieve that which the witnesses testified to before the plea of surprise (point 4); that when the District Attorney pleaded surprise and cross-examined

his own witnesses, he was asking the Jury to disbelieve the testimony of those witnesses (point 5); that the testimony of the witnesses Geraldine Miller, Esther Frable, and Emma Wentzel as to the contents of their written statements, was not affirmative evidence, to be considered against the defendants, but was used for the purpose of inducing you to disbelieve the witnesses (point 6); and further that the Commonwealth is bound by the testimony of the witnesses as to whom surprise is pleaded, as to all testimony given by the witnesses after the plea of surprise was made (point 7); and further that any testimony elicited by the District Attorney on cross-examination of his own witnesses is binding on the Commonwealth (point 8)."

We have carefully reviewed this record and can find no error in the trial of the case. The question of the innocence or guilt of the respective defendants was for the jury. It has found them guilty. There is ample evidence to support the findings and we have no right to disturb the verdicts.

ORDER

AND NOW, October 8, 1956, defendants' motions in arrest of judgment and for a new trial are severally overruled, and the district attorney is directed to notify the defendants to appear in Court on Oct. 22nd, 1956, at 1:30 p.m., for sentence.

Per Curiam

W. G. B.

Exception—Nos. 17 and 44 Nov. T. 1955
(Commonwealth v. Robert Randall)
Order

X.

EXCEPTIONS

(1) EXCEPTION—Nos. 17 and 44 November Term, 1955

(Commonwealth v. Robert C. Randall)

AND NOW, this 22nd day of October, 1956, the above-named defendant, by his attorneys, Herbert Fishbone and David H. Miller, excepts to the opinion and order of the Court dated October 8, 1956, wherein the defendant's motions for a New Trial and in Arrest of Judgment were denied and dismissed, and wherein the defendant was further directed to appear in Court on Monday, October 22, 1956 at 1:30 p.m. for the imposition of sentence.

DAVID H. MILLER
HERBERT FISHBONE
Attorneys for Defendant

AND NOW, this 5th day of Nov., 1956, the foregoing Exception is overruled and bill sealed.

By the Court,
W. G. BARTHOLD
P.J.

Exception—No. 17-B, Nov. T. 1955
(Commonwealth v. Sophie Wofsy)
Order

(2) EXCEPTION—No. 17-B November Term, 1955

(Commonwealth v. Sofie Wofsy)

AND NOW, this 22nd day of October, 1956, the above-named defendant, by her attorney, Justin D. Jirolanio, excepts to the opinion and order of the Court dated October 8, 1956, wherein the defendant's motions for a New Trial and in Arrest of Judgment were denied and dismissed, and wherein the defendant was further directed to appear in Court on Monday, October 22, 1956, at 1:30 p.m. for the imposition of sentence.

DAVID H. MILLER
HERBERT FISHBONE
JUSTIN D. JIROLANIO
Attorney for Defendant

AND NOW, this 5th day of Nov., 1956, the foregoing Exception is overruled and bill sealed.

By the Court,
W. G. BARTHOLD
P.J.

Sentence—No. 17 Nov. T. 1955
(Commonwealth v. Robert Randall)

XI.

SENTENCES

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(1) SENTENCE—No. 17 November Term, 1955

(Commonwealth v. Robert Randall)

AND NOW, October 22, 1956, the defendant appeared before the Court. Same day the sentence of the court is that the defendant pay a fine of $300.00 to the Commonwealth of Pennsylvania, for the use of the County of Northampton, pay costs of Prosecution and in default thereof to undergo imprisonment in the Northampton County Prison for a period of 3 months.

Sentence—No. 17-B Nov. T: 1955
(Commonwealth v. Sophie Wofsy)

(2) SENTENCE– No. 17-B November Term, 1955

(Commonwealth v. Sophie Wofsy)

AND NOW, October 22, 1956, the defendant appeared before the Court. Same day sentence of the court is that the defendant pay a fine of $300.00 to the Commonwealth of Pennsylvania for the use of the County of Northampton, pay costs of Prosecution, and in default thereof to undergo imprisonment in the Northampton County Prison for a period of 3 months.

Sentence—No. 44 Nov. T. 1955
(Commonwealth v. Robert Randall)

(3) SENTENCE—No. 44 November Term, 1955

(Commonwealth v. Robert Randall)

AND NOW, October 22, 1956, the defendant appeared before the Court. Same day the sentence of the court is that the defendant undergo imprisonment in the Northampton County Prison for a period of 1 to 3 years, computed from date of commitment, pay a fine of $100.00, pay costs of Prosecution and stand committed until this sentence is complied with.

SUPREME COURT, U.S.

MAY 3 1958

JOHN T. ... Y, Clerk

IN THE

Supreme Court of the United States

October Term, 1957 No. 70

ROBERT RANDALL,

Petitioner

vs.

COMMONWEALTH OF PENNSYLVANIA

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

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STATUTE:

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Roscoe Pound, Law and Morals (University of North Carolina Press, 1924) 16

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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1957 No.

COMMONWEALTH OF PENNSYLVANIA

vs.

ROBERT RANDALL,
Petitioner

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

Your petitioner, Robert Randall, respectfully prays that a writ of certiorari issue to review the judgment of the Supreme Court of Pennsylvania entered in the above entitled case.

OPINIONS BELOW

The opinion of the Trial Court, the Court of Quarter Sessions of Northampton County, Pennsylvania, is unreported — a copy is printed on pages 242 to 265 of the record. The opinion of the Superior Court of Pennsylvania is reported at 183 Pa. Superior Ct. 603, 133 Atlantic 2d 276. The Supreme Court of Pennsylvania denied an appeal without opinion by entry of the following order: "October 10, 1957. Petition Denied. Per Curiam." (Appendix p. 41)

JURISDICTION

The jurisdiction of this Court is invoked under the provisions of 28 U.S. Code Annotated, Section 1257.

Petitioner, Robert Randall, was sentenced by the Court of Quarter Sessions of Northampton County, Pennsylvania, on October 22, 1956 to a prison term of one to three years and a fine of One Hundred ($100.00) Dollars. This sentence followed conviction by a jury on February 16, 1956 of the crime of "corrupting the morals of a child under the age of eighteen years," Pennsylvania Laws, Act of June 3, 1953, P.L. 277, Sect. 1, 18 Purdons Statutes, Sect. 4532.

An appeal from the sentence of the Court was filed November 1, 1956 with the Superior Court of Pennsylvania, Philadelphia District. That Court, on June 11, 1957 filed

its opinion affirming the sentence. Subsequently, on June 20, 1957, petitioner filed in the Supreme Court of Pennsylvania, Eastern District, a Petition for Allowance of Appeal from the Decision of the Superior Court to the Supreme Court. This petition was denied October 10, 1957

QUESTION PRESENTED FOR REVIEW

1. Does Pennsylvania Act of June 3, 1953, P.L. 277, Sect. 1, violate the due process clause of Section 1 of the Fourteenth Amendment to the United States Constitution for the reason that its provisions are vague and indefinite and do not apprise the public of the nature of the prohibited act, in that the sole definition of a misdemeanor is an act "which corrupts or tends to corrupt the morals of any child under the age of eighteen years"?

COMMONWEALTH OF PENNSYLVANIA
STATUTORY PROVISIONS

"Whoever, being of the age of twenty-one years and upwards, by any act corrupts or tends to corrupt the morals of any child under the age of eighteen years, or who aids, abets, entices or encourages any such child in the commission of any crime, or who knowingly assists or encourages such child in violating his or her parole or any order of court, is guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine not exceeding one thousand dollars ($1000) or undergo imprisonment not exceeding three (3) years or both.

"A conviction under the provisions of this section may be had whether or not the jurisdiction of any juvenile court has attached or shall thereafter attach to such child or whether or not such child has been adjudicated a delinquent or shall thereafter be adjudicated a delinquent.

"In trials and hearings upon charges of violating the provisions of this section, knowledge of the minor's age and of the court's orders and decrees concerning such minor shall be presumed in the absence of proof to the contrary."

Act of June 3, 1953, P.L. 277, 18 P.S., sec. 4532.

STATEMENT OF THE CASE

Robert Randall was indicted and convicted of "corrupting the morals" of children under the age of eighteen as a result of a party which took place at his home in the afternoon of August 19, 1955. Present at various times during that afternoon were four other adults and six children ranging in age from 12 to 17 years. All witnesses agreed that beer and whiskey were available to the children. The testimony of Charles Tomsic and his sister Geraldine, though not corroborated by other witnesses, was to the effect that Randall was wearing a pair of pajama pants torn in such a way that his private parts were visible. One witness, Geraldine Tomsic, 16 years of age, at first denied that Randall had asked her to have sexual intercourse with him (R. 49), but after the District Attorney had pleaded surprise and been allowed to cross-examine her, she stated that Randall had asked three of the girls to have intercourse with him (R. 53). This was not corroborated by any one of the other ten eye witnesses, nor was her statement that Randall asked several of the girls to sit on his lap (R. 43).

In charging the jury as to the definition of the crime of "corrupting the morals" the Trial Court read the pertinent provisions of the Statute and gave to the jury the dictionary definition of the words "corrupt" and "tend" (R. 206). No further instructions were given to the jury as to any legal standard of morality in the community.

Two other questions were raised in the Courts below—The first related to an interpretation of the statute making

it a misdemeanor to furnish liquor to minors, an offense of which Petitioner Randall was also convicted on the same facts. The second concerned an error in the restriction of cross-examination of Homey Smickley which was held by the Courts below to be harmless error. Neither question is pertinent to this petition.

HOW CONSTITUTIONAL QUESTION WAS RAISED

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1. Motion in Arrest of Judgment filed with the Trial Court on February 20, 1956 (R. 233):

> "Defendant was deprived of due process of law as required by Section 1 of the 14th Amendment of the Constitution of the United States, because the offense of corrupting or tending to corrupt the morals of any child under the age of 18 years, as contained in the Act of June 3, 1953, P.L. 277, Sect. 1, Title 18 Purdons Statutes, Sect. 4532, does not define a crime with sufficient standard so as to apprise defendants of the nature of prohibited acts."

The matter was subsequently argued and the due process question was treated at length in the opinion of the Court of Quarter Sessions of Northampton County, Pennsylvania, written by the trial judge (R. 244-252). The Court concluded,

> "It is our considered judgment that the statute under consideration, when viewed in its proper setting, is not unconstitutional for lack of precise standards. There can be no basically valid disagreement in civi-

lized society as to what acts 'corrupt or tend to corrupt' the morals of children." (R. 251-252)

2. On appeal to the Superior Court of Pennsylvania, the following question was presented:

> "1. Is the Act of June 3, 1953, P.L. 277, Sect. 1, which makes it a crime 'to commit an act which corrupts or tends to corrupt the morals' of any child under the age of eighteen, in violation of the Fourteenth Amendment to the United States Constitution?"

3. Petition to Supreme Court of Pennsylvania for allowance of appeal from Superior Court of Pennsylvania (Appendix, page 33):

> "3. That the questions upon which the present petition is based are the same questions presented before the Superior Court of Pennsylvania and are as follows:
>
> "(a) 'Is the Act of June 3, 1953, P.L. 277, Sect. 1, which makes it a crime 'to commit an act which corrupts or tends to corrupt the morals' of any child under the age of eighteen, in violation of the Fourteenth Amendment to the United States Constitution?'"

* * * * * *

ARGUMENT

Does the declaration of any "act" as a crime if it "corrupts or tends to corrupt the morals of a child", provide a sufficiently definite test to ascertain guilt or innocence? That, concisely, is the question in this case.

Robert Randall was convicted of the above-defined crime on the basis of an indictment which was framed almost totally and without further elaboration, in the statutory language (R. 14).

Briefly stated, it is his contention that the words of the statute, in the light of the construction given them by the Pennsylvania Courts, are so vague and indefinite that they do not furnish the accused the essentials of due process.

The broad general constitutional principles involved have been stated many times by your Honorable Court. Illustrative is *Connally v. General Const. Co.*, 269 U.S. 385, 46 S. Ct. 126, 70 L. Ed. 322 (1926), where the principle is stated as follows:

> ". . . a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law . . ."

Further guideposts are contained in the same case as to the application of the general principles. In those cases where statutes have been held sufficiently certain, the words or phrases involved had either of two characteristics: the

first being a technical or special meaning well enough known for those concerned to correctly apply, and the second being a well-settled common-law meaning.

Additional tests are stated in *Winters v. New York*, 333 U. S. 507, 68 S. Ct. 665, 92 L. Ed. 840 (1948):

> "The vagueness may be from uncertainty in regard to persons within the scope of the Act . . . or in regard to the applicable tests to ascertain guilt."

Application of the foregoing tests finds the Pennsylvania Statute in question wanting in certainty. It is not asserted that there is any vagueness with respect to the persons within the scope of the Act—"Whoever, being of the age of twenty-one years and upwards". It is, however, argued that the statute fails to meet any of the other tests. This should be most easily demonstrated with regard to the first test as to whether or not the words have a technical or special meaning.

The sole definition of the nature of the crime as charged to the jury by the Trial Court is contained in one paragraph (R. 206a) wherein the Court read to the jury the dictionary definition of the words "corrupt" and 'tend". Not one word as to the legal standard of morality in the community is contained in the charge. Obviously, resort to dictionary definitions would not occur in the case of technical words or those with a special meaning.

Mention of the moral standards of the community is contained in the opinion of the Superior Court:

> "It should be remembered that we are not here dealing with a *moral* concept about which our people widely differ; corrupting the morals of children is

condemned throughout our land". (Appendix p. 24—Emphasis added).

The use of the words "moral concept" indicates that the Superior Court was thinking in moral terms about the certainty of the statute, whereas Petitioner was urging that there was no definite "legal standard" contained in the statute.

The situation is further compounded because later in the same paragraph of the opinion (Appendix p. 24) the Superior Court infers that the word "immoral" has legal meaning per se— in other words is synonymous with "illegal":

> "... Our Federal and State Constitutions assume that the moral code which is part of God's order in this world, exists as the substance of society. The people of this State have acted through their legislature on that assumption. We have not so cast ourselves adrift from that code nor are we so far gone in cynicism that the word 'immoral' has no meaning for us. Our duty, as a court, is to uphold and enforce the laws, not seek reasons for destroying them."

Whether or not the above-quoted language may be considered somewhat impaired as authority, because it is almost exactly a quotation from the concurring opinion in *Commercial Pictures Corp. v. Board of Regents, etc.*, 305 N.Y. 336, 113 N.E. 2d 502, at page 510, a case later reversed at 346 U.S. 587, 74 S. Ct. 286, 98 L. Ed. 329 (1954), is not of relative importance here. (It is interesting to note that the *Commercial Pictures* case was considered by the Supreme Court of Pennsylvania as authority that the words "immoral" and "tend to debase or corrupt morals"

were vague and indefinite in a motion picture censorship statute. *Hallmark Productions, Inc. v. Carroll*, 384 Pa. 348, 121 A. 2d 584 (1956)). However, it is respectfully submitted without any sacrilegious intent, that reference to a "moral code", part of "God's order", as having been assumed into the Constitution does not confer any greater certainty on the statute here attached. On the contrary, it adds to the confusion which was created by enactment of the statute.

Reference to "morals" in terms of "God's order" would imply an immutable code given to us by divine hand, requiring no further definition in day to day application. Yet the Superior Court recognized that morals change with times and conditions (Appendix 25).

A simple example will illustrate that the words of the statute do not convey definite ideas of the prohibited acts: If it is assumed, arguendo, that immediately before the enactment of the "corrupting" statute, it was not a crime in Pennsylvania for a man over 21 to request intercourse with a girl over 16 (age of consent), did it become obvious immediately upon enactment that this statute prohibited such conduct? Yet, that is one of the facts upon which Petitioner was convicted. The example also illustrates that "immorality" is not necessarily "illegality" since we may assume that in most circles a request of intercourse would have seemed "immoral" even before the passage of the corrupting act. It is questionable whether it would have been deemed "illegal".

The contention that the words of the statute have a well-settled common law meaning is ruled out specifically by the further provisions of the statute. The language

following establishment of corrupting the morals as a crime states:

> ". . . *or* who aids, abets, entices or encourages any such child in the commission of any crime." (Emphasis supplied.)

The crime of corrupting the morals is thus a new crime, not previously defined, since known crimes are covered in the later clause. It is also obvious that the several references in the opinion of the Superior Court to changing moral standards in the community rule out any consideration that the words of the statutes were construed as having a common-law meaning, even though there is a reference to the general principle that the common law punished whatever outraged public decency or morals. A group of specific common law crimes are obviously based on this general principle. A mere statement of the principle does not however make for certainty as to particular conduct.

The remaining test, as indicated in *Winters v. New York*, supra, is whether or not the applicable tests to ascertain guilt are vague. It is respectfully submitted that the statute could not be more vague as to this requirement. There is not even an indication whether the act must be done with criminal intent. The scope of conduct which could conceivably be prohibited is so broad as to render the statute meaningless. This latter point has already been demonstrated in a related field of legislation—the statutes making conduct criminal which contributes to the delinquency of a minor. Such have been considered relevant by both the Trial Court (R. 248) and the Superior Court (Appendix 26). There are no apparent limits to the scope of the "delinquency" acts, as evidenced by a few sample cases:

State v. Davis, 58 Arizona 444, 120 P. 2d 808 (1942) (A father convicted for encouraging child to refuse to salute the American flag because of religious scrupies);

State v. Scallan, 201 La. 1026, 10 So. 2d 885 (1942) (accused permitted daughter under 17 to go to a nightclub);

In re Lewis, 193 Misc. 676, 84 N. Y. Supp. 2d 790 (1948) (Defendant owned bowling alley and employed 15 year old boy to work. Boy saw money placed in desk and stole it.)

Moreover the "delinquency" acts have been disapproved by responsible authority in the field of youth welfare, largely on the ground that their scope is too broad:

> ". . . No recommendation is made that there be a statutory crime of contributing to the delinquency or neglect of a minor. Many of the . . . statutes now on the books are phrased so broadly that . . . the variety of types of adult conduct which might be found to constitute criminal conduct are indefinite and more than are needed to protect children adequately."
>
> U. S. Dept. of Health, Education and Welfare. *Standards for Specialized Courts Dealing with Children*, 35 (1954).

In the only case where a statute as broad as this "corrupting" statute has been construed by your Honorable Court, the legislative enactment has been found too vague. In that case, *Musser v. State of Utah*, 333 U.S. 95, 68 S. Ct. 397, 92 L. Ed. 562 (1948), several defendants were indicted under a statute prohibiting conspiracy "(5) to commit any

act injurious . . . to public morals." The statute was held prima facie void as vague and uncertain but the case was remanded to the State court, so that court would have the opportunity to construe the words. The State court later held the words could not be construed beyond their general meaning. Your Honorable Court said:

> "In some states, the phrase 'injurious to public morals' would be likely to punish acts which it could not punish in others because of the varying policies on such matters as use of cigarettes or liquor and the permissibility of gambling. . . . Statutes defining crimes may fail of their purpose if they do not provide some reasonable standards of guilt."

The *Musser* case was distinguished below on the ground that the prohibitions of the Utah Statute were much broader, since conspiracy was also prohibited which was injurious to public "health" or "trade" or "commerce". This may have been true of the statute but seems not to have been the rationale of the decision. See, for example, the construction of the *Musser* case in *State v. Vallery*, 212 La. 1095, 34 So. 2d 329 (1948).

Furthermore it does not seem that narrowing the scope of the statute to deal with the morals of children under the age of 18 would make for more certainty than injury to "public morals." It may be said that there is some unanimity of opinion as to moral standards for very young pre-adolescent children, a subject on which the common law developed many specific crimes. On the other hand there is no broader and more antagonistic difference of opinion than between the advocates of strict control and the advocates of self-determination for the adolescent and teen-ager. The variations of definitions as to moral conduct

on such subjects as drinking, dating, petting, gambling, etc. in these groups are infinite, and the pinpointing of a "community standard" would probably reflect only the combined moral judgment of a single jury, not necessarily drawn from a cross-section of the community.

It is precisely in an area of private morality that these battles of opinion are fought. The failure of this "corrupting" statute is that it invades this area of private morality or immorality, as it were, because of its failure to set a standard. Perhaps it cannot be more clearly indicated than by pointing out that the word "moral" has often been used to contrast with "legal", and is so associated in the public mind. Could the same members of the public as a jury be said to be applying a "legal" standard when they have all their lives used the word "moral" as meaning something different than "legal."

The difference between "legality" and "morality" has also preoccupied legal philosophers and judges. Roscoe Pound, *Law and Morals* (University of North Carolina Press, 1924) especially at pages 101, 102; Morris R. Cohen, *Law and the Social Order* (Harcourt, Brace and Company, New York, 1933) especially at page 348; Benjamin N. Cardozo, *The Paradoxes of Legal Science* (Columbia University Press, 1928) especially at page 37.

The words of Mr. Justice Holmes in an address entitled "The Path of the Law" put most precisely the argument here made as to the distinction between morality and law:

> "The first thing for a business-like understanding of the matter is to understand its limits, and therefore I think it desirable at once to point out and dispel

a confusion between morality and law, which sometimes rises to the height of conscious theory, and more often and indeed constantly is making trouble in detail without reaching the point of consciousness. You can see very plainly that a bad man has as much reason as a good one for wishing to avoid an encounter with the public force, and therefore you can see the practical importance of the distinction between morality and law. A man who cares nothing for an ethical rule which is believed and practiced by his neighbors is likely nevertheless to care a good deal to avoid being made to pay money, and will want to keep out of jail if he can."

Oliver Wendell Holmes, *Collected Legal Papers*, (Harcourt, Brace and Company 1921) at pages 169-170.

Petitioner prays that a Writ of Certiorari be granted by your Honorable Court.

Respectfully submitted,
HERBERT FISHBONE,
And
JUSTIN D. JIROLANIO,
Attorneys for Petitioner.

APPENDIX

ORDER OF THE COURT OF QUARTER SESSIONS OF NORTHAMPTON COUNTY, PENNSYLVANIA

"AND NOW, October 8, 1956, defendants' motions in arrest of judgment and for a new trial are severally overruled, and the district attorney is directed to notify the defendants to appear in Court on Oct. 22nd, 1956, at 1:30 p.m., for sentence. Per Curiam W.G.B."

OPINION OF THE SUPERIOR COURT OF PENNSYLVANIA

(Reported at 183 Pa. Superior Ct. 603, 133 Atlantic 2d 276)

Opinion by Ervin, J., June 11, 1957:

Defendant, Robert Randall, was found guilty under the Act of June 3, 1953, P.L. 277, §1, 18 PS §4532, which provides: "Whoever, being of the age of twenty-one years and upwards, by any act corrupts or tends to corrupt the morals of any child under the age of eighteen years . . . is guilty of a misdemeanor. . . ." Defendants, Robert Randall and Sophie Wofsy, were also found guilty of violating Paragraph 1, §493, of the Liquor Code, 47 PS §4-493, which provides: "It shall be unlawful (1) For any licensee or the board, or any employe, servant or agent of such licensee or of the board, or any other person, to sell, furnish or give any liquor or malt or brewed beverages, or to permit any liquor or malt or brewed beverages to be sold, furnished or given to any person visibly intoxicated, or to any insane person, or to any minor, or to habitual drunkards, or persons of known intemperate habits." The cases were tried together, the charges against both defendants having arisen out of the same circumstances and at the same time. Defendants' motions in arrest of judgment and for new trial were denied and sentences were imposed upon the defendants, whereupon the instant appeals were taken by both defendants.

Defendant Randall argues that the above referred to act of 1953 is so vague and indefinite that it violates the

due process clause of the 14th Amendment to the United States Constitution, which provides: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law." It is undoubtedly the law that to comply with this requirement of the Constitution "a statute must be sufficiently certain and definite to inform the citizen of the acts it is intended to prohibit. A statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must guess as to its meaning and differ as to its application lacks the first essential of due process of law." 14 Am. Jur., Criminal Law, §22; Com. v. Klick, 164 Pa. Superior Ct. 449, 453, 65 A. 2d 440.

In support of his position, defendant Randall relies heavily on the case of Musser v. State of Utah, 333 U.S. 95, 68 S. Ct. 397, which involved a statute of the State of Utah prohibiting a conspiracy on the part of two or more persons "To commit any act injurious to the public health, to public morals, or to trade or commerce, or for the perversion or obstruction of justice or the due administration of the laws . . ." Thirty-three persons were charged under this act with conspiring to encourage and practice polygamy. The entire statute was stricken down for being too vague and unenforceable. The court, in its opinion, stated: "It is obvious that this is no narrowly drawn statute. . . . Standing by itself, it would seem to be warrant for conviction for agreement to do almost any act which a judge and jury might find at the moment contrary to his or its notions of what was good for health, morals, trade, commerce, justice or order." It is apparent that the Musser case is not

authority for defendant's position that the phrase "corrupt the morals" is so vague and indefinite that it offends the due process clause of the Constitution. The statute in the Musser case related to acts deemed injurious not only to "public morals" but also to "public health . . . or to trade or commerce or for the perversion or obstruction of justice or the due administration of the laws." In the case at bar we are concerned only with the word "morals" as related to children under the age of 18 years. This is a much more definite and restrictive area than that which was involved in the Musser case. We believe that the word "morals" has a definite and well-settled meaning. Defendant Randall also placed great reliance upon the case of Hallmark Productions, Inc. v. Carroll, 384 Pa. 348, 121 A. 2d 584. In this case the Pa. State Board of Censors had refused to approve display of a motion picture, "She Should'a Said No," involving the enticement of people into the sale and use of marijuana. The board, under this statutory authority, found that the film was "indecent and immoral" and, in the judgment of the board, tended to debase and corrupt morals. In the majority opinion of the Supreme Court the language of the statute was found to be vague and indefinite and therefore unconstitutional. In the majority opinion written by Horace Stern, then Chief Justice, there will be found a review of the decisions of the Supreme Court of the United States on this subject.

The first case reviewed is Joseph Burstyn, Inc. v. Wilson, Commissioner of Education of New York, 343 U.S. 495. In that case a New York statute provided for the banning of a motion picture film if it or a part thereof was "obscene, indecent, immoral, inhuman, sacrilegious, or of such a character that its exhibition would tend to corrupt morals or incite to crime." The New York State Board

of Regents determined that a certain film examined by them was sacrilegious and ordered a rescission of the license to exhibit it. An affirmation of that order by the New York Court of Appeals was reversed by the Supreme Court of the United States. The appellant there argued (1) that the statute was a violation of the right of free speech and (2) that the term "sacrilegious" was so vague and indefinite as to constitute a denial of due process. The Burstyn opinion ends with a statement that "Since the term 'sacrilegious' is the sole standard under attack here, it is not necessary for us to decide, for example, whether a state may censor motion pictures under a clearly drawn statute designed and applied to prevent the showing of obscene films. That is a very different question from the one now before us. We hold only that under the First and Fourteenth Amendments a state may not ban a film on the basis of a censor's conclusion that it is 'sacrilegious.'" Chief Justice Stern then reviews the following cases: Gelling v. Texas, 343 U.S. 960; Winters v. New York, 333 U.S. 507; Superior Films, Inc. v. Department of Education, and Commercial Pictures Corp. v. Board of Regents of University of State of New York, 346 U.S. 587. In all of these cases censorship under state acts was stricken down by per curiam opinions citing merely the Burstyn case. At the very end of his opinion in the Hallmark case (p. 358) Chief Justice Stern states: "It need hardly be added that even if all pre-censorship of motion picture films were to be held invalid this would not in and of itself affect the right to suppress objectionable films if exhibited, or to punish their exhibitor." (Emphasis added). In his dissenting opinion, Mr. Justice Musmanno, at p. 367, states: "After the decision of the Majority will have been handed down, those same shameful, shameless, degrading films may be

projected anywhere in Pennsylvania publicly, the distributors and exhibitors being subject only, *after the showing, to the penalty provided under criminal law.*" (Emphasis added) We think it is clear that the Supreme Court in the Hallmark case intended to leave open the question of whether the legislature, by the use of clear language, could make it a crime to commit any act which would corrupt or tend to corrupt the morals of our youth. In this connection the language of Mr. Justice Musmanno in his dissenting opinion in the Hallmark case, at p. 371, is significant. He said: "However, there is nothing vague or uncertain about the words, 'obscene,' 'indecent,' and 'immoral.' There is nothing ambiguous about 'debasement and corruption of morals.' Any citizen with a fairly good education, excellent character, good religious upbringing, social consciousness and devotion to the ideals of democracy, can pass with satisfactory results on whether certain motion pictures are moral and proper."

In the censorship cases the courts were concerned not only with the question of whether the language in the statute was so vague and indefinite as to constitute a denial of due process but also with that part of the Constitution which has to do with the right of free speech. In the present case we are not concerned with the freedom of speech provision. We are concerned only with the question of whether the statute which prohibits any acts which corrupt or tend to corrupt the morals of a child under 18 years of age is sufficiently clear and definite to advise the public of the proscribed conduct.

It is interesting to note that appellant Randall did not question the sufficiency of the evidence relating to the charge made against him. Without going into great detail,

that evidence reveals that a party was held in defendant Randall's home, in the course of which some of the six minor children, whose ages ranged from 12 to 17 years, were served beer, whiskey and vodka and that the defendant Randall, clad only in the bottom of a pair of torn pajamas through which his private parts were visible to the minor children, invited several of the minors to sit on his lap, kiss him and have intercourse with him.

It should be remembered that we are not here dealing with a moral concept about which our people widely differ; corrupting the morals of children is condemned throughout our land. According to common understanding, the term "morals" must be taken to refer to the moral standards of the community, the "norm or standard of behavior which struggles to make itself articulate in law." Cardozo, Paradoxes of Legal Science, pp. 17, 41, 42. "Sound morals as taught by the wise men of antiquity, as confirmed by the precepts of the gospel . . . are unchangeable. They are the same yesterday and today." We see no reason to retreat from those ideas. "We are a religious people whose institutions presuppose a Supreme Being." Zorach v. Clauson, 343 U.S. 306, 313, 72 S. Ct. 679, 684, 96 L. Ed. 954. Our Federal and State Constitutions assume that the moral code which is part of God's order in this world, exists as the substance of society. The people of this State have acted through their legislature on that assumption. We have not so cast ourselves adrift from that code nor are we so far gone in cynicism that the word "immoral" has no meaning for us. Our duty, as a court, is to uphold and enforce the laws, not seek reasons for destroying them.

The comprehensive words of the statute, "whoever, being of the age of twenty-one years and upwards, by

any act corrupts or tends to corrupt the morals of any child under the age of eighteen years" certainly convey concrete impressions to the ordinary person. The common sense of the community, as well as the sense of decency, propriety and the morality which most people entertain is sufficient to apply the statute to each particular case, and to individuate what particular conduct is rendered criminal by it.

It is obvious that the mandates of the statute are salutary measures designed to protect children. "The ways and means by which the venal mind may corrupt and debauch the youth of our land, both male and female, are so multidudinous that to compel a complete enumeration in any statute designed for protection of the young before giving it validity would be to confess the inability of modern society to cope with the problem of juvenile delinquency." State v. McKinley, 202 P. 2d 964, 967, 53 N.M. 106; State v. Harris, 141 S.E. 637, 105 W. Va. 165. The general language of the statute, therefore, is not a valid objection to it on constitutional grounds. Unless words of such seeming generality as "moral" and "immoral" were valid in statutes, government itself would become impossible. Manifestly, there can be no objection to the use, in a statute, of words like "corrupts the morals" or "tends to corrupt the morals of any child," which include many things, all of which are intended by the legislature to be covered; otherwise, there would be barred from statutory use such customary verbiage as "fraudulent," "due," "negligent," "arbitrary," "reasonable," etc.

It is not a valid criticism that such general moral standards may vary slightly from generation to generation. Such variations are inevitable and do not affect the applica-

tion of the principle at a particular period in time: Parmalee v. U. S., 72 App. D.C. 203, 113 F. 2d 729. The highest court in the land has recognized that the "Use of common experience as a glossary is necessary to meet the practical demands of legislation" and that the "requirement of reasonable certainty does not preclude the use of ordinary terms to express ideas which find adequate interpretation in common usage and understanding." Sproles v. Binford, 286 U.S. 374, 393, 52 S. Ct. 581, 587, 76 L. Ed. 1167.

The constitutionality of similar statutes defining crimes in general terms has been upheld by many courts where the general terms used in the particular statute get precision from common standards of morality prevalent in the community.

The validity of statutes making it a crime to contribute to the delinquency of minors has been upheld in our own State and other jurisdictions: Com. v. Jordan, 136 Pa. Superior Ct. 242, 7 A. 2d 523; Com. v. Wink, 170 Pa. Superior Ct. 96, 84 A. 2d 398; Com. v. Siroik, 175 Pa. Superior Ct. 10, 102 A. 2d 239; People v. Friedrich, 52 N.E. 2d 120 (Ill.); State v. Montalbo, 110 A. 2d 572 (N.J.); State v. Roessler, 266 P. 2d 341 (N.M.).

The term "moral turpitude" has been held adequate to satisfy even the strict rule applicable to criminal statutes: Jordan v. DeGeorge, 341 U.S. 223, 232, 71 S. Ct. 703, 708. The term "good moral character" as used in the immigration and nationality laws has frequently been applied by the courts. The measure applied is the "common standard of morality" prevalent in the community: Estrin v. U. S., 2 Cir., 86 F. 2d 105; or the "common conscience"

of the community." Johnson v. U. S., 2 Cir. 186 F. 2d 588, 590.

We are convinced that the statute here involved was couched in language sufficiently clear and definite to proscribe the conduct of defendant Randall.

Section 493, subparagraph 1, of the Liquor Code of 1951, supra, provides: "It shall be unlawful (1) For any licensee or the board, or any employe, servant or agent of such licensee or of the board, *or any other person*, to sell, furnish or give any liquor or malt or brewed beverages, or to permit any liquor or malt or brewed beverages to be sold, furnished or given to . . . any minor. . . ." (Emphasis added) The defendants argue that under the *ejusdem generis* rule, the words "any other person" refer to persons in the same class as those enumerated, i.e., licensees or board or any employe, servant or agent of licensee or the board, and that defendants do not fall within any of these classes. The doctrine does not require that the general term "or any other person" be limited in its scope to the persons specifically enumerated. "The doctrine of ejusdem generis is but a rule of construction to aid in ascertaining and giving effect to the legislative intent, where there is uncertainty, and does not warrant the court in subverting or defeating the legislative will by confining the operation of a statute within narrower limits than intended by the lawmakers. If, on consideration of the context and whole law upon the subject, and the purposes sought to be effected, it is apparent that the legislature intended the general words to go beyond the class specially designated, the rule does not apply." 50 Am. Jur., Statutes, §250; see also Endlich on Interpretation of Statutes, §410; Com. v. Klucher, 326 Pa. 587, 591, 193 A. 28. In this connection

we quote with approval from the excellent opinion of President Judge Barthold: "When the above tests are applied to the statute in question it is obvious that there is no uncertainty in the meaning of the words employed by the legislature.

"The purpose of the Liquor Code is set forth in sec. 4(a), 47 P.S. sec. 1-104, as follows: 'This act shall be deemed an exercise of the police power of the Commonwealth for the protection of the public welfare, health, peace and morals of the people of the Commonwealth and to prohibit forever the open saloon, and all of the provisions of this act shall be liberally construed for the accomplishment of this purpose.'

"Sec. 102, 47 P.S. sec. 1-102, defines the word 'person' to mean 'a natural person, association or corporation.'

"Secs. 491, 492 and 493, 47 P.S. secs. 4-491, 4-492, 4-493, set forth in separate paragraphs the 'Unlawful acts relative to liquor, alcohol and liquor licensees,' the 'Unlawful acts relative to malt or brewed beverages and licensees,' and the 'Unlawful acts relative to liquor, malt and brewed beverages and licensees.' We deem it noteworthy that the legislature carefully differentiated between 'persons', 'licensees', 'manufacturers', etc., in its enumeration of prohibited acts. In some instances all 'persons' are prohibited from doing certain things; in other instances the prohibition applies only to licensees of various types or their 'servants, agents or employes' etc. This is a clear indication that the legislature intended that some of the prohibitions were to apply to all persons while others were to apply only to 'licensees', or 'their servants, agents or employes'.

"It is particularly significant that sec. 493 sets forth 25 prohibited acts relative to liquor, malt and brewed

beverages; and that the words 'or any other person' are included only in the subparagraph which makes it unlawful to sell, furnish or give any liquor or malt or brewed beverages to minors. It is significant also that minors are not the only class of persons to whom liquor or malt or brewed beverages may not be sold, furnished or given. Visibly intoxicated persons, insane persons, habitual drunkards and persons of known intemperate habits are similarly protected.

"We think that the legislature in using the words 'or any other person' deliberately selected these words in order to prohibit minors, visibly intoxicated persons, insane persons, habitual drunkards, and persons of known intemperate habits, from obtaining liquor, malt or brewed beverages, whether by purchase or gift, from licensees or any other persons. The intention of the legislature to protect the classes of persons named is the underlying consideration. If we were to restrict this section of the Act to 'licensees' or their 'servants, agents or employes,' we would nullify the very purpose of the Act."

We are convinced that both defendants were properly convicted under this portion of the Liquor Code.

The defendants also complain as to the restriction imposed by the lower court on the cross-examination of Homer Smickley as to his arrest, plea of guilty and sentence on charges similar to those made against the defendants. Homer P. Smickley was called as a Commonwealth witness. He had been indicted on two counts, the first charged him with corrupting the morals of children and the other charged him with furnishing intoxicating beverages to minors. The charges arose out of the same set of circumstances as the charges against defendants. When

the cases were called for trial the district attorney asked leave to "withdraw" the indictment on corrupting morals on the ground that the only evidence against Smickley was that he furnished liquor or beer. This motion was granted by the court. On examination by the district attorney, Smickley admitted that he was an inmate of Northampton County Prison on a parole violation and that he had pleaded guilty to a liquor violation in connection with the Randall case. When defendants' counsel attempted to cross-examine Smickley to show that he was also charged with "corrupting the morals" and that the charge had been withdrawn, and to question him on the circumstances under which the charge had been withdrawn, the court sustained objections to the cross-examination. It might have been better if the lower court had permitted a wider cross-examination. In Com. v. Mulroy, 154 Pa. Superior Ct. 410, 416, 417, 36 A. 2d 337, we said: "Of course, if the witness is under indictment for the same crime, or for a crime growing out of, or closely related to, the very offense for which the defendant is being tried, so as to form a part of the same occurrence or transaction, it is proper for the jury to know it, as bearing on the witness's interest in the immediate matter . . . 'When the co-indictee testifies for the accused, his situation here also may be considered as tempting him to exonerate the other accused and thus help towards his own freedom' (3 Wigmore on Evidence (3d Ed.) §967. So, too, if the witness, thus under indictment, testifies for the Commonwealth, it may be that his testimony was biased because given under promise or expectation of immunity or leniency from the officers conducting the prosecution being tried: . . . ; and the jury are entitled to know it." The questions and answers and comments of counsel in connection with the testimony of Smickley clear-

ly portrayed to the jury the nature of Smickley's connection with the cases under trial so that the jury could not have been under any misapprehension as to Smickley's interest, possible bias or prejudice or that his testimony may have been given with expectation of immunity, clemency or leniency. Moreover, the jury was adequately instructed that it should be satisfied upon the point of the truthfulness of his testimony and "should carefully and clearly scrutinize his testimony, accept it with caution, not only because of any interest that Homer Smickley might have, but because his testimony is evidence from a corrupt source, in view of the fact that he was an accomplice and pleaded guilty to the charge." The court also pointed out in its charge how the testimony of Smickley was corroborated by other evidence if the jury should believe that evidence. We are, therefore, of the opinion that the court's action constituted error in the abstract and that it is not sufficient to warrant a retrial where the conclusion is inescapable that this error did not influence the jury against the accused or deprive them of their right to a fair trial. Com. v. Barnak, 357 Pa. 391, 423, 424, 54 A. 2d 865; Com. v. Linkowski, 363 Pa. 420, 424, 70 A. 2d 278; Com. v. Felgoise, 129 Pa. Superior Ct. 74, 79, 194 A. 751; Com. v. Oldham, 178 Pa. Superior Ct. 354, 358, 115 A. 2d 895.

The judgments are affirmed and it is ordered that appellants appear in the court below at such time as they may be there called and that they be by that court committed until they have complied with their sentences or any part of them which had not been performed at the time the appeal was made a supersedeas.

JUDGMENT OF THE SUPERIOR COURT OF PENNSYLVANIA

"The judgments are affirmed and it is ordered that appellants appear in the court below at such time as they may be there called and that they be by that court committed until they have complied with their sentences or any part of them which had not been performed at the time the appeal was made a supersedeas."

PETITION FOR ALLOWANCE OF APPEAL FROM SUPERIOR COURT OF PENNSYLVANIA TO THE SUPREME COURT OF PENNSYLVANIA

To the Honorable, the Justices of the Said Court:

The petition of Robert Randall, Respectfully Represents:

1. The petitioner was the defendant in two indictments originating in the Court of Quarter Sessions of Northampton County, Pennsylvania, to Nos. 17 and 44 October Sessions 1955. The indictments charged him with violations of the Act of June 3, 1953, P.L. 277 §1, 18 Purdons Statutes §4532, and with the violation of Par. 1 of §493 of the Liquor Code of 1951, Act of April 12, 1951, P. L. 90 Art. XIV §493 as amended, 47 Purdons Statutes 4-493. The case was tried in conjunction with the case of Commonwealth v. Sophie Wofsy No. 17-B October Sessions 1955 before Judge Barthold and a jury, and, after a verdict of guilty, motions in arrest of judgment and for a new trial were duly filed. These motions were subsequently denied and an appeal was taken to the Superior Court of Pennsylvania as of Nos. 71 and 73 October Term 1957. The Superior Court affirmed the judgment and sentence in an opinion by Ervin, J., a copy of which is hereto attached and marked Exhibit "A".

2. The facts in the case are as follows:

The petitioner was charged with the violation of the above cited Acts which provide as follows:

"Whoever, being of the age of twenty-one years and upwards, by any act corrupts or tends to corrupt the morals of any child under the age of eighteen years . . . is guilty of a misdemeanor. . ." Act of June 3, 1953, P. L. 277 §1.

"It shall be unlawful—

(1) For any licensee of the board, or any employe, servant or agent of such licensee or of the board, or any other person, to sell, furnish or give any liquor or malt or brewed beverages, or to permit any liquor or malt or brewed beverages to be sold, furnished or given, to any person visibly intoxicated, or to any insane person, or to any minor, or to habitual drunkards, or persons of known intemperate habits." Liquor Code of 1951, Act of April 12, 1951, §493 Par. 1.

The indictments arose out of events occurring at Petitioner Randall's home near Wind Gap, Pa., on August 19, 1955. On that date there were present in his home Sophie Wofsy a divorcee over twenty-one years of age, Charles Tomsic age 17, Mrs. Geraldine Tomsic Miller age 16, Hermina Heatter age 12, Jack Marsh age 17, Emma Wentzell age 15, Esther Frable age 14, Homer P. Smiekley an adult, and 2 adult plumbers who were working at Randall's home.

The evidence reveals that some of the children were served beer, whiskey and vodka. Some of the witnesses also testified that the Petitioner Randall was clad only in the bottom of a pair of torn pajamas through which his private parts were visible, and that while so clad he invited several of the minors to sit on his lap and to kiss him. One witness testified that he asked three of the girls

to have intercourse with him. These facts were contradicted by other witnesses, but the jury apparently believed the testimony of Charles Tomsic, his sister Mrs. Geraldine Miller, and the testimony of Homer P. Smickley. In the course of the trial, the District Attorney pleaded surprise as to three witnesses, and over objection was permitted to cross-examine the witnesses and to quote portions of the statements which the witnesses had given before trial.

The jury returned a verdict of guilty on both charges and subsequent to the lower court's denial of motions in arrest of judgment and for a new trial, the petitioner was sentenced on the corrupting of morals charge to a term of one to three years and a fine of $100.00. With respect to the Liquor Code violation he was fined $300.00.

3. That the questions upon which the present petition is based are the same questions presented before the Superior Court of Pennsylvania and are as follows:

(a) Is the Act of June 3, 1953, P.L. 277, Sect. 1, which makes it a crime "to commit an act which corrupts or tends to corrupt the morals" of any child under the age of eighteen, in violation of the Fourteenth Amendment to the United States Constitution?

(b) Does the Pennsylvania Liquor Code, Act of April 12, 1951, Art. XIV, Sect. 493 apply to members of the general public without relationship to a licensee of the Liquor Control Board?

(c) When a witness, who has been indicted on two charges arising out of the same circumstances under which defendant is indicted, testifies for the Commonwealth, is it error to refuse to allow cross-examination of the witness as to the circumstances

under which one of the two charges has been withdrawn, and as to whether or not he has been sentenced?

4. That the reasons for requesting allowance of appeal are as follows:

(A) *With respect to the Act of June 3, 1953 (Corrupting the morals of children)*—

(1) The case is one of first impression in Pennsylvania. No previous attack has been made on the constitutionality of this Statute.

(2) In distinguishing this penal statute from the Pennsylvania Movie Censorship Statute held unconstitutional in Hallmark Productions Inc. v. Carroll, 384 Pa. 348, 121 A. 2d 584, the Superior Court infers that a different and more strict standard of definiteness will be applied in cases involving freedom of expression than in cases involving criminal statutes. It is respectfully submitted that Hallmark Productions Inc. v. Carroll, supra, is not authority for such a proposition. On the contrary it would seem that the standard of construction would be more strict where a criminal statute is involved. Furthermore it appears that the Superior Court followed a liberal rule of construction as opposed to the usual strict rule when a penal statute is involved. The following language from the opinion will illustrate:

> "It is obvious that the mandates of the statute are salutary measures designed to protect children. . . . The general language of the statute, therefore, is not a valid objection to it on constitutional grounds. Unless words of such seeming generality as 'moral' and 'immoral' were valid in statutes, government itself would become impossible."

(3) The Superior Court's opinion fails to note one of petitioner's principal arguments. This argument was that the crime of corrupting the morals was intended by the Legislature as a new crime not previously known to the law. This is so because in the second clause of the same statute the Legislature made it a misdemeanor to aid, abet, entice or encourage "any such child *in the commission of any crime*" (Emphasis supplied). It was argued to the Superior Court that this second clause applied to all acts of a defendant which could have been the subject of an indictment at common law or are otherwise recognizable as statutory crimes. It was argued therefore that the crime of "corrupting the morals" is a new offense not previously defined.

(4) The opinion of the Superior Court fails to note the argument of petitioner that the statute delegates to the individual juror's standard of morality the definition of the crime of "corrupting the morals"—thus an unlawful delegation of power by the Legislature. This was exemplified by the Charge of the lower court which was restricted to dictionary definitions of the words "corrupt" and "tend" (R. 206a). The jury therefore had the duty in addition to finding the facts, of construing the legal standard to be applied in determining whether morals were corrupted. The Superior Court held only that the words of the statute "convey concrete impressions to the ordinary person."

(B) . *With respect to the construction of Paragraph 1, Sect. 493 of the Liquor Code of 1951*—

(1) The case is one of first impression in Pennsylvania appellate courts. The opinion of the Superior Court apparently overrules Commonwealth v. Dalton, 46 Luzerne

Leg. Reg. 77 (1956) where the Court had applied the rule of "ejusdem generis" in construing the meaning of the words "or any other person" in the section of the statute which provides as follows:

> "It shall be unlawful (1) for any licensee of the board, or any employe, servant or agent of such licensee or of the board, *or any other person* to sell. . ." (Emphasis supplied)

As these words are construed by the Superior Court, no notice is taken of the fact that of sixteen penal sections in the Liquor Code this section is the only one where the words "any . . . person" follow more limited classifications. In all other sections the Legislature used the words "It shall be unlawful—for any person."

(2) The question to be determined is of state-wide importance because as construed by the Superior Court the language of this section of the Liquor Code can be applied to convict a guest in a home whose only crime would be to pour a glass of beer for his host's eighteen year old son. This is not a stretching of the construction given the Act inasmuch as Sophie Wofsy, petitioner's co-defendant, was convicted under this section on the sole ground that while present as a guest in petitioner's home she poured drinks for other guests who were under twenty-one.

(3) The Superior Court applied a liberal rule of construction to the penal sections of the Liquor Code. This was done by quotation from the Liquor Code in part as follows: "All of the provisions of this Act shall be liberally construed for the accomplishment of this purpose." It is submitted that extension of the penal provisions of this section of the Liquor Code to members of the general public

should be accomplished only by clear and precise language to that effect by the Legislature. Reliance on a strict rule of construction with respect to this statute as is usual with regard to criminal statutes would likely have produced a different result in this case.

(C) *With respect to petitioner's motion for a new trial based on improper restriction of the cross-examination of Homer P. Smickley, a Commonwealth witness—*

The Superior Court ruled that the Trial Court's error in this regard was error in the abstract, and therefore not sufficient ground for reversal. Petitioner respectfully submits that this ruling is based upon an erroneous conception of what happened at the trial. Though the Superior Court recognized that the trial court had improperly restricted petitioner's counsel on cross-examination of Homer Smickley to show his bias or interest, the opinion of the Superior Court notes "the questions and answers and the comments of counsel in connection with the testimony of Smickley clearly portrayed to the jury the nature of Smickley's connection with the cases under trial. . ." Furthermore it was noted that Smickley's testimony was corroborated by other testimony in the case.

Two reasons are respectfully submitted as to why the trial court's error was reversible error. First, defendant's counsel were never permitted to show that Smickley had not yet been sentenced when he testified. Therefore the jury did not know all the facts upon which it could judge Smickley's testimony. As a matter of fact petitioner submits that it is error to consider that the jury was aware of Smickley's interest when the plain implication of a court's ruling refusing a line of cross-examination is that such examination would be improper. To say that the jury

was aware is to say that the jury ignored the plain meaning of the court's ruling.

Second, the opinion of the Superior Court considers that Smickley's testimony was corroborated. Yet the Commonwealth felt impelled to call Smickley as a rebuttal witness to testify solely to two facts on which there was a conflict in the evidence: (1) that petitioner Robert Randall was wearing pajamas rather than blue denim trousers; and (2) that petitioner Randall had asked him to get the beer and liquor after the children had arrived at Randall's home (R. 182a, 183a). If the Commonwealth at trial felt it necessary to expressly call Smickley for these purposes during the trial, it is difficult to understand how a Court can now say that the error of the trial court had no possible effect on the verdict. This especially in view of the fact that Smickley was the only adult eye-witness to testify for the Commonwealth of the five adults present in petitioner's home. His possible bias or interest was therefore extremely important.

5. That copies of the briefs and record filed in this case in the Superior Court accompany this petition.

WHEREFORE petitioner prays that he be allowed to appeal from the judgment of the Superior Court aforesaid to the Supreme Court of Pennsylvania.

ROBERT RANDALL

HERBERT FISHBONE

Attorney

State of Pennsylvania
County of Northampton, ss:

ROBERT RANDALL, being duly sworn according to law, deposes and says that he is the petitioner herein and that the statements made in the foregoing petition for allowance of appeal from the Superior Court to the Supreme Court are presented in good faith; that petitioner believes he has suffered injustice by the order from which he appeals, and that the said petition is not filed for the purpose of delay.

ROBERT RANDALL

Sworn to and subscribed before me this 19th day of June 1957.

ORDER OF SUPREME COURT OF PENNSYLVANIA

"October 10, 1957. Petition denied. Per Curiam."